U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27943191

Date: OCT. 12, 2023

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native of Pakistan and a citizen of Canada currently residing in Canada, has applied for an immigrant visa, which requires him to show, inter alia, that he is admissible to the United States. Section 245(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(a)(2). He was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude ("CIMT"), and he sought a discretionary waiver of inadmissibility under section 212(h) of the Act.

The Director of the Nebraska Service Center denied the waiver application, concluding that the Applicant was ineligible for a waiver under section 212(h) of the Act because he was convicted of an aggravated felony after having been admitted to this country as a lawful permanent resident ("LPR"). Section 212(h)(2) of the Act. The Director further determined that the Applicant also did not warrant a waiver as a matter of discretion because his equities did not outweigh the negative considerations.

On appeal, the Applicant submits a brief and additional documents, reasserts his eligibility for a waiver, and maintains that he warrants a favorable exercise of discretion. We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Applicant has the burden of establishing his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon de novo review, we will dismiss the appeal.

A noncitizen convicted of a CIMT is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. Section 212(h)(1)(A) or 212(h)(l)(B) of the Act provides for a discretionary waiver where the respective eligibility requirements are met. But no such waiver is available for those who have previously been admitted to the United States as an LPR if they have been convicted of an aggravated felony since the date of such admission. Section 212(h)(2) of the Act. Pursuant to section 101(a)(43)(M)(i) of the Act, 8 U.S.C. § 1101(a)(43)(M)(i), an offense that involves fraud or deceit in which the loss to the victim(s) exceeds $10,000 is an aggravated felony. In addition to establishing eligibility for a waiver, the noncitizen also must demonstrate that they warrant a waiver as a matter of discretion. *Id.*; *see also Matter of Mendez-Moralez*, 21 I&N Dec. 296, 299 (BIA 1996).

The record shows that the Applicant was admitted and entered the United States as an LPR in 2007. In 2013, he pled guilty to multiple counts of Medicaid fraud under Louisiana Revised Statutes section 14:70.1. The sentencing court, pursuant to Article 893 of Louisiana Criminal Procedure Code

("CPC"), deferred the Applicant's sentencing for three years and placed him on supervised probation with special conditions, including an order that he must pay $96,000 in restitution to the victims. The Director determined that the Applicant's conviction constituted a CIMT and an aggravated felony under the Act.[1]

The Applicant's appeal arguments and documents, which are largely duplicative, do not establish that the Director erred in denying the waiver application. The Applicant does not contest, and our review of the record supports, the Director's determination that his conviction for Medicaid fraud is a CIMT, rendering him inadmissible. Instead, he reiterates that the fact that his probation was terminated early undermines the legitimacy of his criminal trial. He also reiterates that his conviction was ultimately set aside and expunged under Louisiana CPC Article 893, which he argues is equivalent to his conviction being vacated for immigration purposes, such that he is no longer inadmissible for having been convicted of a CIMT.

As we, the Director, and the Board have repeatedly noted in connection with the Applicant's prior applications for a waiver and other forms of relief, the record does not show that the court set aside his conviction due to a procedural or substantive defect in the underlying criminal proceedings. Rather, the conviction was set aside and expunged for rehabilitative purposes based on court-ordered conditions that were imposed on him subsequent to his guilty plea, and not due to any constitutional defect in the conviction itself. *Matter of Cruzado*, 14 I&N Dec. 513, 514-15 (BIA 1973) (holding that the setting aside of a conviction under Louisiana CPC Article 893 did not vacate the conviction for immigration purposes because it was under a rehabilitative statute); *Matter of Thompson and Thomas*, 27 I&N Dec. 674 (A.G. 2019) (providing that court orders that modify, clarify, or otherwise alter a sentence have no effect for immigration purposes, if unrelated to the merits of the underlying criminal proceeding, such as rehabilitation or the avoidance of immigration consequences); *see also Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003) (same), *rev'd on other grounds*, *Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006). Thus, the Applicant's Medicaid fraud conviction remains a conviction for immigration purposes, and he is inadmissible under the Act for having been convicted of a CIMT.

The Applicant also argues that even if his expunged conviction remains a conviction for immigration purposes, it is not an aggravated felony conviction under section 101(a)(43)(M)(i) of the Act because the actual loss to the victims tied to the 18 counts of his conviction did not exceed $10,000. But the sentencing court's explicit restitution order of $96,000 clearly shows the amount of loss to the victims.[2] *See, e.g.*, *Fosu v. Garland*, 36 F.4th 634, 638 (5th Cir. 2022) (holding that the judgment for the noncitizen's fraud conspiracy conviction provided clear and convincing evidence of the total amount of restitution that was significantly higher than $10,000).

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[1] Following sentencing, he was found to be removable from the United States because the underlying offenses of which he was convicted for Medicaid fraud constituted two or more CIMTs not arising out of a single scheme, and his conviction was also an aggravated felony under section 101(a)(43)(M)(i) of the Act. An Immigration Judge subsequently ordered him removed, the Board of Immigration Appeals (Board) dismissed his appeal, the United States Court of Appeals for the Fifth Circuit denied his request for stay of deportation, and he was ultimately deported from the United States, after which his petition for review of the Board's decision before the Fifth Circuit was also denied. The Applicant's subsequent waiver applications and related matters have been before the Director and us numerous times, which were all denied or dismissed.

[2] The underlying conviction documents, including the related investigations report and court minutes, unequivocally state that the Applicant was clearly ordered to pay (and he did pay) the court-ordered restitution in the amount of $96,000 to the Louisiana Department of Health and Hospitals.

The Applicant further asserts that his conviction is not an aggravated felony because his offense did not carry a maximum term of at least one year and he only served probation. But, as noted, section 101(a)(43)(M)(i) of the Act defines an offense—like the one to which the Applicant pled guilty—that involves fraud or deceit in which the loss to the victim(s) exceeds $10,000 as an aggravated felony, without any other qualifying terms. He is thus ineligible for a waiver because his conviction, which involved fraud and a loss to the victim(s) exceeding $10,000, was an aggravated felony under the Act.

The Applicant nonetheless also alleges due process violations against the opposing parties and reviewing entities in his underlying criminal and removal proceedings—including the Department of Homeland Security (DHS), the Board, and the United States Court of Appeals for the Fifth Circuit—for mishandling his case and unfairly targeting him, which he claims undermine his conviction. But these allegations are beyond the scope of the matter before us. Moreover, we cannot go behind a conviction to reassess guilt or innocence. *See, e.g.*, *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996); *Matter of Mendez-Moralez*, 21 I&N Dec at 303, n.1. Further, to the extent we construe his argument as constitutionally challenging legal authorities applicable to his underlying criminal and removal proceedings, we also lack authority to consider such a challenge. *See Chang v. United States*, 327 F.3d 911, 924 (9th Cir. 2003) (explaining that constitutional challenges to the rule of law "lie outside the scope and jurisdiction of the immigration judges and the [Board]").

The Applicant's remaining arguments based on the DHS' policies on deferred action and enforcement priorities do not specifically relate to his waiver case or support the claim that his waiver application must be granted for humanitarian reasons, regardless of his conviction. The Applicant does not cite any pertinent legal authority that his expunged conviction is no longer a conviction for immigration purposes or that it is not an aggravated felony offense under the Act, as he asserts.

Because the Applicant was admitted to the United States as an LPR and subsequently convicted of an aggravated felony, he is ineligible for a section 212(h) waiver. Sections 212(h)(2) and 101(a)(43)(M)(i) of the Act.[3]

ORDER: The appeal is dismissed.

[3] In light of this determination, which is dispositive of this appeal, we do not find it necessary to reach the Applicant's remaining argument that he warrants a waiver as a matter of discretion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that courts and agencies are not required to address issues that are unnecessary to the results they reach).