



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 22961500

Date: OCT. 18, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h). The San Bernardino, California Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's qualifying relative, his U.S. citizen daughter, would experience extreme hardship if the Applicant were denied the waiver. The Applicant appealed that decision, arguing that a rehabilitation waiver is available to him, and his qualifying relative would experience extreme hardship if he were to be removed from the United States. We dismissed the appeal and a subsequent motion to reopen and reconsider. The matter is now before us on a second combined motion to reopen and reconsider.

On motion, the Applicant highlights perceived errors and he offers additional evidence. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). According to the Instructions for Notice of Appeal or Motion (Form I-290B, Notice of Appeal or Motion), any new facts and documentary evidence must demonstrate eligibility for the required immigration benefit at the time the application or petition was filed. A motion to reopen that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original waiver application. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

A motion to reconsider must: (1) state the reasons for reconsideration, (2) be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy, and (3) establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

In our most recent motion decision, we considered the Applicant's claims for a waiver of section 212(a)(2)(A) of the Act under two statutory provisions: section 212(h)(1)(B) of the Act and section 212(h)(1)(A) of the Act. Our previous decisions recounted his arrest and conviction record, and the original decision on the appeal provided:

The record shows that the Applicant has the following convictions in California: 1) 1992 – California Vehicle Code (CA VC) 23152(a), driving under the influence of alcohol and CA VC 12500(a), driving without a driver's license; 2) 1995 – California Penal Code (CA PC) 484F(b), forging of access card; forgery of access card account information; 3) 1998 – CA PC 273.5, inflicting corporal injury to a spouse or cohabitant; 4) 2008 – CA PC 484F(b), forging name access card etc.; 5) 2009 – CA VC 23152(b), driving under the influence of alcohol; and 6) 2010 – CA VC 23152(b), driving under the influence of alcohol. The Director found the Applicant's 1995 and 1998 convictions constituted CIMTs [crimes involving moral turpitude].

We also note the Applicant's criminal history reflects a 2010 arrest for possession of a controlled substance and a 2015 arrest for inflicting corporal injury on a spouse or cohabitant—neither of which resulted in a conviction—and several instances of probation in which he failed to comply with court-imposed mandates resulting in bench warrants and further taxing the court system.

A. Extreme Hardship Waiver

Within this motion, the Applicant first addresses the waiver under section 212(h)(1)(B) and the hardship to his qualifying relative. The Applicant discusses his neurological disorder and the lack of treatment options available in his home country. He takes issue with our discussion of the letter from a Nigerian physician in which we stated the physician “does not claim any expertise or training in neurology.” On motion, the Applicant incorrectly characterizes another part of our discussion in which he claims we stated that Nigerian doctor “is currently engaged in a Neuro-surgical post.” A review of the motion decision reveals the full context relating to this physician, which was the physician stated treatment for the Applicant's disease is nonexistent in Nigeria, evidence from the National Institutes of Health indicated that there is no standard course of treatment for his disease, the physician did not claim any expertise in neurology and instead was a resident doctor in anesthesia, the physician claimed he is currently engaged in a neuro-surgical post, and we further stated:

[T]he record does not indicate that surgery is used to treat Fahr's disease, and the Applicant's own medical documentation in the record does not reflect such surgery or any recommendation for future surgery. The only documented treatment that the Applicant has received is “balance training” from a physical therapist. The record does

not establish that the Applicant is currently receiving treatment in the United States that he would not be able to receive in Nigeria.

We find the Applicant's characterization of our acknowledgement of an uncorroborated assertion in the physician's letter to be unpersuasive and inaccurate. The Applicant provides additional materials relating to the treatment he receives in the United States, to include medication, speech therapy, and that he is being considered as one who might be included in a study case. Still, he has not established that medication and speech therapy are treatments he could not receive in Nigeria.

Additionally, although the Applicant alleges this error in the previous motion decision, he does not explain how this had the potential to change the outcome of that decision, nor has he shown that the decision was incorrect based on the evidence in the record at the time of the decision. *See* 8 C.F.R. § 103.5(a)(3) (describing these requirements for a motion to reconsider). Additionally, he has not supported those allegations with citations to appropriate statutes, regulations, precedent decisions, or U.S. Citizenship and Immigration Services (USCIS) policy. Finally, the alleged errors relate directly to him and medical treatment in his home country and he failed to explain—in the event we were to agree with his allegations—how that relates to extreme hardship to his qualifying relative. We note he must establish extreme hardship to his qualifying relative as the initial step in attaining an approval of a waiver under section 212(h)(1)(B).

B. Rehabilitation Waiver

Next, the Applicant discusses the waiver under 212(h)(1)(A) where he must show that he meets all three requirement items in the form of the following: (1) the activities for which he is inadmissible (convictions for forgery in 1995 and inflicting corporal injury in 1998) occurred more than 15 years before the date of his application; (2) his admission to the United States would not be contrary to the national welfare, safety, or security of the United States; and (3) he has been rehabilitated. In our previous motion decision, we concluded the Applicant did not establish that he satisfied requirement items 2 or 3.

On motion, the Applicant contends our previous decision contained incorrect elements—that in his opinion—demonstrates he has rehabilitated, and his admission would not be contrary to the national welfare, safety, or security of the country. Even if we accept there were some minor factual errors in our most recent motion decision (e.g., he was not arrested in 2014 for driving under the influence), the Applicant has not met his burden to show we should reconsider our determination.

More importantly, the Applicant has not shown that we erred when we evaluated whether his admission to the United States might be contrary to our national welfare, safety, or security, which is one of three mandatory requirements for a waiver under section 212(h)(1)(A). In other words, he did not show that we erred in our analysis to the extent that it resulted in an incorrect decision. This falls short of meeting the requirements of a motion to reconsider in which the Applicant must not only support his claims with pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy—which he also failed to present—but also, he must establish the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

Nevertheless, on motion the Applicant asserts that given his neurological illness, he is incapable of physically being a danger to the community, his condition is irreversible, and he is fully disabled so it would be in error and against the interests of justice to deny his rehabilitative waiver application. The Applicant offers a Form N-648, Medical Certification for Disability Exceptions dated in March 2022. The Form N-648 is only for use with an N-400, Application for Naturalization, to enable applicants for naturalization to seek an exception to the English and civics requirements because of the physical or developmental disability, or mental impairment. The Form N-648 is not intended to serve any purpose for a waiver application such as the current filing. Despite its intended use, we will consider the form's content.

The medical doctor on the N-648 indicated the Applicant experiences a certain level of speech loss, his motor function is affected but lacks an indication of the severity, and he is unable to write. The medical doctor does not offer a fully detailed account of the Applicant's physical abilities due to the form's limited space, but he does state the condition will gradually progress and worsen. We are highly sympathetic to the Applicant's circumstances, but he has not adequately documented the extent of his condition to demonstrate his admission would not be contrary to the national welfare, safety, or security of the United States. Stated differently, the record as it currently stands does not contain enough information regarding the Applicant's condition that we can even conduct that analysis, let alone find in his favor.

Next, we move to the third requirement in which the Applicant must show genuine rehabilitation. Here, the Applicant falls short of such a showing. He states within the motion that he is rehabilitated essentially because he lacks a conviction for unlawful activity since 2011. Beyond the Applicant's general statements, the record does not contain evidence regarding the Applicant's rehabilitation. *See Matter of Roberts*, 20 I&N Dec. 294, 299 (BIA 1991) (stating that an applicant for discretionary relief "who has a criminal record will ordinarily be required to present evidence of rehabilitation before relief is granted as a matter of discretion"). Moreover, avoiding arrest and conviction in and of itself does not demonstrate rehabilitation.

Rehabilitation is generally accepted in legal circles as a situation in which an offender seeks to improve their criminal character and outlook to enable them to function in society without committing other crimes. *See Rehabilitation, Black's Law Dictionary* (11th ed. 2019). Other examples that may speak to rehabilitation could include accepting responsibility and acknowledging one's role in the misconduct, expressing remorse, or volunteerism and topic-focused counseling that are not imposed by a court. Where an applicant has not explained or acknowledged their role in the misconduct, it calls into question the extent to which they are rehabilitated. *See Matter of Marin*, 16 I&N Dec. 581, 588 (BIA 1990) (noting that an applicant for discretionary relief with a criminal record must ordinarily present evidence of genuine rehabilitation); *Matter of Mendez*, 21 I&N Dec. 296, 304–05 (BIA 1996) (stating that rehabilitation includes the extent to which an applicant has accepted responsibility and expressed remorse for their actions).

The Applicant has demonstrated a long history of criminal and other possible unlawful activity spanning from at least 1992 through 2015. It wasn't until the Applicant's qualifying relative filed the relative petition on his behalf until his arrests or convictions stopped occurring. All of the facts from his most recent arrest for inflicting corporal injury are not fully clear from the record, nor did the Applicant express why the arrests or convictions ceased around the time his daughter filed the relative

petition on his behalf, but the recency of that arrest and his sporadic but numerous interactions with law enforcement during his time residing in the United States, collectively undermine his claim that he has rehabilitated.

Additionally, the fact that the Applicant's 2010 arrest for possession of a controlled substance and his 2015 arrest for inflicting corporal injury on a spouse or cohabitant may not have resulted in actual convictions for various reasons, this does not equate with a finding that the underlying conduct or behavior leading to those charges did not occur. As the previous motion decision noted, the waiver the Applicant seeks under section 212(h)(1)(A) of the Act is discretionary in nature and USCIS may take into account all factors in making its determination. The fact that the Applicant engaged in conduct resulting in multiple arrests but was not convicted does not sufficiently demonstrate that he is rehabilitated to the extent he claims within the present motions.

We also observe that a review of the court records most often reveals the Applicant initially pled not guilty to each of the charges, eventually withdrawing that plea and changing it to *nolo contendere* before being found guilty. That does not reflect he was accepting responsibility and acknowledging his role in the misconduct before the courts. Nor does he presently offer any particular acceptance of his illegal actions or express remorse for them.

In evaluating claims under a section 212(h)(1)(A) waiver, we also consider compliance with immigration laws. The Applicant lawfully came to the United States as a nonimmigrant student more than four decades ago but failed to depart when required. He remained in the country and his recorded criminal activity began approximately a decade later and continued at least for two decades and possibly until 2015. Simply because a foreign national has more recently cooperated with our immigration laws does not negate the fact that they have previously flouted that same set of laws. *Matter of Correa*, 19 I&N Dec. 130, 135 (BIA 1984). Even when a foreign national resides in the United States in a lawful status—which has not been the case for this Applicant since the early 1980s—when a portion of that time was marked by their participation in criminal activity, the residency is not wholly considered as a positive factor. *Douglas v. I.N.S.*, 28 F.3d 241, 245 (2d Cir. 1994). Compare *Matter of Buscemi*, 19 I&N Dec. 628, 629–30 (BIA 1988) (in which the foreign national spent thirteen years in United States before being convicted of a crime).

When considering the length of a foreign national's presence in the United States, the nature of that presence during this period must be evaluated. *Mendez*, 21 I&N Dec. at 302. See also *Dragon v. INS*, 748 F.2d 1304, 1307 (9th Cir. 1984); *Matter of Tin*, 14 I&N Dec. 371, 374 (BIA 1973); *Buscemi*, 19 I&N Dec. at 633 (citing to *Marin*, 16 I&N Dec. at 584 (finding that violations of immigration laws, such as residing in the country in an unlawful status, are an adverse factor); 1 *USCIS Policy Manual* E.8(C)(2), and 7 *USCIS Policy Manual* A.10(B)(2), <https://www.uscis.gov/policymanual> (requiring that a foreign national's residence in the United States be in a *lawful* status to qualify as a positive factor). The Applicant's violation of our immigration laws, to include committing and being convicted of at least two CIMTs, prove to be adverse to his claims of rehabilitation.

III. CONCLUSION

The Applicant's motion does not present new facts, supported by documentary evidence that would cause us to conclude in his favor for his motion to reopen. See 8 C.F.R. 103.5(a)(2). As it relates to

a motion to reconsider, he does not establish that our previous motion decision was based on an incorrect application of law or policy, nor does he cite to any applicable authority. And even if he had satisfied those two requirements for a motion to reconsider, he did not demonstrate the chief requirement: that we incorrectly dismissed his motions. As a result, he has not established that we should reconsider our most recent motion decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.