



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

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 11105921

Date: MAY 06, 2021

Appeal of Newark, New Jersey Field 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 Act, 8 U.S.C. § 1182(h).

The Director of the Newark, New Jersey Field Office denied the application, concluding that the record did not establish, as required, that denial of admission would result in extreme hardship to the Applicant's qualifying relative. The Director also determined that the Applicant does not merit a favorable exercise of discretion.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal because the Applicant has not met this burden.

## I. LAW

Section 212(a)(2)(A) of the Act provides that any foreign national convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible.

Individuals found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). Section 212(h)(1)(B) of the Act provides for a waiver if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered "extreme," the hardship must exceed that which is usual or expected. See *Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were the "common result of deportation" and did not alone constitute extreme hardship).

In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

## II. ANALYSIS

The issue on appeal is whether the Applicant's qualifying relative would experience extreme hardship if the waiver is denied. The Applicant does not contest the finding of inadmissibility for crimes involving moral turpitude, a finding supported by the record.<sup>1</sup> We have considered all the evidence in the record and conclude that it does not establish that the claimed hardships rise to the level of extreme hardship when considered both individually and cumulatively.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case his U.S. citizen daughter. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant and 2) if the qualifying relative relocates overseas with the applicant. Demonstrating extreme hardship under both of these scenarios is not required if an applicant's evidence establishes that one of these scenarios would result from the denial of the waiver. The Applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the Applicant, or would remain in the United States, if the applicant is denied admission. 9 USCIS Policy Manual B.4(B), <https://www.uscis.gov/policymanual>. In the present case, the record contains no statement from the Applicant or the Applicant's daughter indicating she intends to remain in the United States or relocate to India if the waiver application is denied. The Applicant must therefore establish that if he is denied admission, his daughter would experience extreme hardship both upon separation and relocation.

The record reflects that the Applicant and his spouse married in 1998 and have a daughter, born in 2006. The Applicant asserts that he is the sole breadwinner for his family. He contends that if separated from him, and potentially his spouse,<sup>2</sup> his daughter would be devastated by the permanent disruption of her family, which could have far-reaching effects on her healthy growth.

With his appeal, the Applicant submitted a 2016 psychosocial report based on an evaluation of the Applicant's family which was conducted to determine the hardships that the Applicant's daughter would experience if the Applicant and his spouse relocated to India. The report states that if separated from her father, the Applicant's daughter would be emotionally overwhelmed, and her support system would be permanently undermined. During the evaluation, the Applicant stated that his daughter would also experience financial hardship because if he obtained a job in his field of information technology (IT), he would earn significantly less than his current salary because he is 50 years old and would be viewed as "over the hill."

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<sup>1</sup> The record establishes that in 2014, the Applicant was convicted of conspiracy to commit honest services fraud in violation of 18 U.S.C. section 1349 and honest services fraud in violation of 18 U.S.C. section 1343. He was sentenced to probation for two years, with a special condition of six months of home detention, 200 hours of community service, and restitution of \$142, 967.

<sup>2</sup> The Applicant's spouse is a derivative applicant on the Applicant's Form I-140, Immigrant Petition for Alien Workers. The record reflects that the Applicant's spouse will relocate to India with the Applicant if the application is denied.

We find that the submitted documentation is insufficient to corroborate the claim of extreme hardship upon separation. Regarding emotional hardship, while we acknowledge the Applicant's statements as well as the statements in the psychosocial report regarding the difficulties that the Applicant's daughter would experience if the Applicant departed the United States, the report itself states that if the Applicant and his spouse relocate to India, it would be possible for their daughter "to remain in the United States with extended family members to continue to live in the health and safety of New Jersey where her educational and community needs are met in a safe and healthy manner." The record also does not demonstrate that the Applicant's daughter, who is currently 14 years old, would experience hardship that exceeds that which is usual or expected due to separation from a parent.

With respect to financial hardship, the most recent documentation of the Applicant's income in the record indicates that in 2015, the Applicant had an annual income of \$164,995.<sup>3</sup> The record does not contain current documentation of the Applicant's income or documentation regarding his family's expenses. Consequently, we are unable to assess the Applicant's current financial status. Further, although the Applicant asserts that his employment prospects in India would not be favorable, the record does not demonstrate that the Applicant would be unable to find employment sufficient to support his family.<sup>4</sup>

Based on the record, we cannot conclude that, when considered in the aggregate, any emotional and financial hardships the Applicant's daughter would experience upon separation from the Applicant would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship.

The Applicant must establish that denial of the waiver application would result in extreme hardship to a qualifying relative or qualifying relatives both upon separation and relocation. As the Applicant has not established extreme hardship to his daughter in the event of separation, we cannot conclude he has met this requirement. Therefore, the waiver application will remain denied.<sup>5</sup>

ORDER: The appeal is dismissed.

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<sup>3</sup> This is indicated on the Applicant's 2015 W-2, Wage and Tax Statement.

<sup>4</sup> The psychosocial report indicates that the Applicant is "an accomplished information technology professional with a broad range of experience in deploying storage networking and infrastructure solutions for Fortune 500 companies." The report also states that the Applicant has held various positions for "two decades in both India and the United States."

<sup>5</sup> As the Applicant has not demonstrated that denial of the application would result in extreme hardship to a qualifying relative, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion