



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

H2

FILE:

Office: LONDON, ENGLAND

JUN 20 2007  
Date:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Officer-in-Charge, London, England, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be sustained.

The applicant [REDACTED] is a native and citizen of France who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant is the husband of a U.S. citizen wife and father of a U.S. citizen child. He seeks a waiver of inadmissibility under section 212(h) of the Act.

The OIC concluded that the applicant established that extreme hardship would be imposed on a qualifying relative, his wife and son. However, the OIC denied the Application for Waiver of Excludability (Form I-601) by finding that the record fails to establish relief is warranted in the exercise of discretion. *Decision of the OIC*, dated April 21, 2006.

Section 212(a)(2) of the Act states in pertinent part, that:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

....

- (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien. . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a permissible consideration under the statute and will be considered here only to the extent that it results in hardship to a qualifying relative. It is noted that extreme hardship to the applicant's qualifying relative must be established in the event that he or she accompanies the applicant; and in the alternative, that he or she remains in the United States.

Here, if the applicant's wife joins him in Sweden she will lose her business, separate from family who need her, and have difficulty adjusting to a new language and culture. If the applicant's wife remains in the United States without her husband, she will have the psychological and emotional hardship of separation from her husband who is the father of her child; and she will have difficulty dealing with her business and child, and the increasing health problems of her parents. Cumulatively, these factors constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Morales*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Morales* at 300.

In *Matter of Mendez-Morales*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists,

and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives). . . .

*Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The record depicts [REDACTED]'s convictions as follows:

May 24, 2002 – assault (imprisonment for 10 months) (age 26);

May 29, 2000 – petty larceny, unlawful driving, gross drunken driving, weapons crime (probation with community service, 60 hours) (age 24);

November 20, 1997 – threat against officer, violation of the Knife Act (imprisonment for two months) (age 21);

October 29, 1997 – theft (probation with community service, 80 hours) (age 21);

February 15, 1996 – assault, unlawful threat, theft of means of transportation, attempted theft of means of transportation, violation of the Knife Act (probation and imprisonment for 1 month) (age 20);

March 24, 1994 – unlawful threat, theft, violation of the Knife Act (probation) (age 19);

November 14, 1991 – petty larceny, malicious damage (monetary fine) (age 16).

The record contains letters from [REDACTED] and his wife, mother-in-law, mother and stepfather, sister, friends, parole officer, employers, and others. It contains a certificate for his participation in the crime preventative program “Break Crime.”

[REDACTED] parole officer states the following in the May 8, 2006 letter. It was his responsibility to make sure that [REDACTED] did not continue with a life of crime. Most of [REDACTED]'s crimes involved assault, and were a result of drinking, which he has received help for. While incarcerated, [REDACTED] attended therapy sessions. He has not had a problem with the law for the past five years. The November 20, 1997 offense involved a threat to a “bouncer,” not a police officer. [REDACTED] does not associate with criminal friends from his past. He found a profession he enjoys. He is a changed man and is not a threat to the national welfare, safety, or security of the United States. [REDACTED] was sentenced to prison for his crimes and served his time. He is now reformed. Several times at my work I have found [REDACTED] talking to young men about his story and how his past is keeping him from having a future with his wife and child; he did his best to persuade them to stay out of trouble; he wanted to give them a chance to change. [REDACTED] is not the same angry young man I first met. He is a responsible adult, a good husband, and a proud father. He has a wonderful family that deserves a chance to be together.

[REDACTED] makes the following statements in his letter submitted on appeal. He knows that he did bad things in the past when he was young and he regrets them. He often drank alcohol and could not behave and

got into trouble. He now has obligations and responsibilities to the community and to his family. He has not committed crimes for the past year and does not intend to go back to that lifestyle. He wants to be there for his son and wife. His wife's parents are ill and he would like to be there to help comfort his wife. He loves cooking as a professional chef and has a job offer in the United States.

The letter from [REDACTED] mother and stepfather indicate that [REDACTED] has been working very hard as a chef and state that he is a better man after he met his wife and has worked hard to provide for his wife and son.

The letter from [REDACTED] friend of 15 years, states that [REDACTED] is a calm and responsible person, and that he is very different from 10 years ago. [REDACTED] states that his friend enjoys working as a chef and has trained and earned a diploma for that occupation. According to [REDACTED] since [REDACTED] started working as a chef he has stayed out of trouble.

The letters from [REDACTED] employers commend his character and work ethic. The May 7, 2006 letter from [REDACTED] attests to [REDACTED] good nature, and as head chef, his ability to lead a team of four people. [REDACTED] indicates that he has known [REDACTED] for four years and had married [REDACTED] and his wife.

The May 11, 2006 letter from [REDACTED] 1<sup>st</sup> Vice President of North Hempstead Country Club, indicates that [REDACTED] has the qualities, professionalism, and personality traits the North Hempstead Country Club requires of their employees. The May 11, 2006 letter from the general manager of the country club extends an employment offer of sous chef to [REDACTED]

The adverse factors in the present case are [REDACTED] convictions. It is noted that [REDACTED] was born on October 18, 1975, and he was between the ages of 16 and 26 when he committed the offenses listed above. [REDACTED] is now 31 years old.

The favorable factors in the present case are the extreme hardship to [REDACTED] U.S. citizen wife and child if he were denied a waiver of inadmissibility. [REDACTED] has a consistent record of employment. He indicates that he completed a diploma to work as a chef. He has had no further arrests or convictions since May 2002. Letters from his family, friends, and parole officer indicate that he has changed and is now responsible. The letter from the parole officer states that [REDACTED] is no longer angry and that he talks to young men about staying out of trouble. [REDACTED] is described by his family, friends, and parole office as a responsible adult, a good husband, and a proud father. [REDACTED] expressed his regret about his past actions, and his intention of never returning to his former lifestyle.

The AAO has carefully reviewed the record of proceeding. It finds that the crimes committed by [REDACTED] are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained. The waiver application is approved.