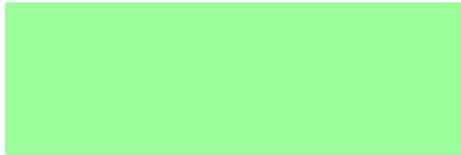




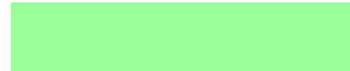
U.S. Citizenship
and Immigration
Services

(b)(6)



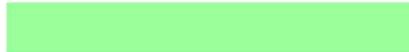
Date: **JAN 15 2014**

Office: GUANGZHOU, CHINA



IN RE:

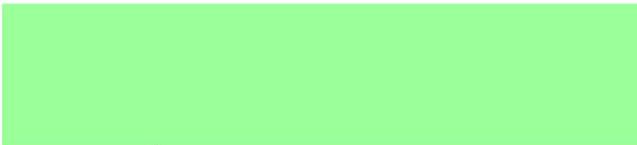
Applicant:



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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

f/ Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Administrative Appeals Office (AAO) granted the applicant's motion in a decision dated August 1, 2013, but affirmed our dismissal of his appeal. The matter is again before the AAO on motion. The motion will be granted and the appeal will be sustained.

The applicant is a native and citizen of China who was found to be inadmissible under 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 been convicted of a crime involving moral turpitude, and section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for seeking admission within ten years of having been ordered removed from the United States. The applicant is the son of a U.S. citizen father and lawful permanent resident mother, the spouse of a U.S. citizen, and the father of U.S. citizen children. He seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his family.

The Field Office Director, Guangzhou, China, concluded that the applicant had failed to establish that a denial of his waiver application would result in extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director*, dated June 24, 2010. In our decision on appeal, we found that the applicant's conviction for robbery was a violent or dangerous crime and that he therefore must establish exceptional and extremely unusual hardship to a qualifying relative in order to meet the heightened discretionary requirement of 8 C.F.R. § 212.7(d). However, we also found that the applicant had failed to demonstrate extreme hardship to a qualifying relative, so it was unnecessary to reach the issue of exceptional and extremely unusual hardship. In our decision on motion, we concluded that the applicant had established extreme hardship to a qualifying relative but had failed to demonstrate exceptional and extremely unusual hardship as required by 8 C.F.R. § 212.7(d).

On motion, the applicant claims that the AAO overlooked and misinterpreted relevant evidence in the applicant's previous submissions. He also asserts that the mental health status of his qualifying spouse is worsening and amounts to exceptional and extremely unusual hardship. Additionally, he states that his children are experiencing exceptional and extremely unusual hardship due to health issues and separation from their parents, and that his eldest son in particular has recently been found to have a worsening mental health condition and special educational needs. Also, he stresses that his convictions occurred nearly 15 years ago and that he has been law-abiding since then.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

With his motion, the applicant has submitted new evidence regarding the changing mental health condition of his qualifying spouse and the educational and health issues of his children. The motion will be granted.

As noted in our other decisions, the applicant has not disputed our findings that he is inadmissible or that his conviction for robbery was a violent or dangerous crime which renders him subject to the heightened discretionary requirement of 8 C.F.R. § 212.7(d). Therefore, the only issue on motion is whether the applicant has demonstrated that he merits a favorable exercise of discretion through a showing of exceptional and extremely unusual hardship.

In our previous decision, we found that although the qualifying spouse would suffer extreme hardship if the waiver application were denied, the evidence was insufficient to demonstrate that she would suffer exceptional and extremely unusual hardship. In particular, we noted that the qualifying spouse's mental health conditions did not prevent her from caring for her children, working, traveling frequently to China, or meeting other responsibilities. However, the new evidence on motion demonstrates that the qualifying spouse's mental health status has continued to deteriorate and that her depression and anxiety are compromising her ability to care for herself and her family. A psychological evaluation by [REDACTED] dated August 30, 2013, states that the qualifying spouse has "severe major depressive disorder which requires extensive medication management and psychotherapy," interferes with her personal relationships, impairs her "familial and social functioning," and includes "moderate suicidal ideation." The evaluation also indicates that the qualifying spouse's depression has worsened from "severe" to "extreme" since December 2012, that her suicidal ideation has increased slightly, and that her life stressors have increased significantly, indicating "major susceptibility and risks to illness and mental health problems." Additionally, the evaluation states that the qualifying spouse will struggle to maintain mental health treatment while traveling frequently to China to visit the applicant, that she is under significant marital stress, and that she is struggling to care for her children on her own. [REDACTED], also confirms in an evaluation dated August 29, 2013 that the qualifying spouse requires prescription medication for her depression and anxiety and that she has "difficulties in taking care of herself and her children due to continuous depressive symptoms." In light of this updated information regarding the qualifying spouse's worsening mental health status and its serious effects on her daily life, the AAO finds that she would experience hardship "substantially" beyond the ordinary hardship that would be expected" if the waiver application were denied. *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 63 (BIA 2001).

We also found in our previous decision on motion that the evidence was insufficient to show that the applicant's eldest son, [REDACTED] would experience exceptional and extremely unusual hardship if the waiver were denied. Our finding was based on the lack of proof that [REDACTED] was receiving inadequate care from his mother and extended family, that he was exhibiting behavioral problems, and that he would be at risk for health problems in China. However, the updated evidence on motion indicates that [REDACTED] has recently been diagnosed with ADHD and Oppositional Defiant Disorder (ODD). According to the August 30, 2013 evaluation from Dr.

██████████ “has developed serious mental, emotional, and behavioral difficulties” and “has been seriously impacted by his father’s[] relocation to China, subsequent disruption of family life, and inadequate parenting.” Furthermore, based on an interview with ██████████ teachers, Dr. ██████████ reports that ██████████ “is very disruptive and uncooperative when he is moody or tired,” which happens more frequently when ██████████ is in the care of his grandparents, and that his academic performance also suffers during this time. ██████████ also “argues with adults and shows temper outburst[s],” is “spiteful or vindictive,” fights with classmates, has difficulty concentrating, appears sad or depressed, and exhibits numerous other behavioral problems. ██████████ recommends that ██████████ “receive extensive interventions, including behavior therapy, parenting skills training, and medication management if necessary” and that he “be cared [for] by two parents in a secure and stable environment.” Finally, ██████████ notes that ██████████ grandparents provide inadequate care for him in his parents’ absence and that Justin would be unlikely to receive necessary treatment for his ADHD and ODD in China.

An August 26, 2013 evaluation from ██████████, also diagnoses ██████████ with ADHD and ODD and states that he “has displayed severe behavior problems possibly due to his illness and unstable living condition and lacking of family structure.” Additionally, the record contains a report from one of ██████████ teachers, ██████████, dated August 21, 2013, confirming that ██████████ exhibits difficult behaviors at school, particularly when he is left in the care of his grandparents while his mother is visiting the applicant in China. Based on the detailed information regarding ██████████ mental health diagnoses, special educational needs, inadequate care, and difficulty adapting to his family situation, the AAO finds that he will suffer exceptional and extremely unusual hardship if the applicant’s waiver request is denied.

Therefore, we conclude that the applicant has demonstrated that a denial of his waiver application would result in exceptional or extremely unusual hardship, as required by 8 C.F.R. § 212.7(d). Because the applicant has established exceptional and extremely and unusual hardship to his spouse and his eldest son, we will not address whether his other family members would also face exceptional and extremely unusual hardship, though we give all hardships weight in our discretionary analysis.

We also find that the gravity of the applicant’s offense does not outweigh the extraordinary circumstances discussed. In considering whether the applicant warrants a favorable exercise of discretion, we also engage in a traditional discretionary analysis and “balance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 300 (BIA 1996). In this case, the applicant’s conviction for third degree robbery occurred on January 28, 2002, nearly twelve years ago. There is no evidence that he has been engaged in criminal activity since his conviction. In the meantime, he has cared for his family and run a business. In addition to the hardship experienced by the applicant’s spouse and eldest son, his two younger sons and his parents also rely on him for emotional support. The record also indicates that the applicant’s parents both suffer from various medical problems.

When considered in the aggregate, these factors outweigh the adverse factors in the applicant's case. Therefore, we find that the applicant has demonstrated that he merits a waiver in the exercise of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met. Accordingly, the motion is granted and the appeal is sustained.

ORDER: The motion is granted. The appeal is sustained.