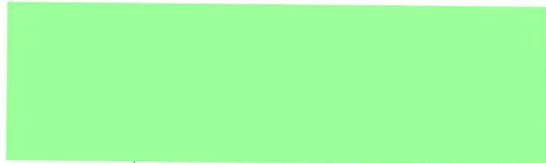




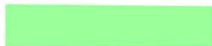
U.S. Citizenship
and Immigration
Services

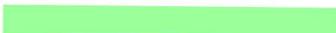
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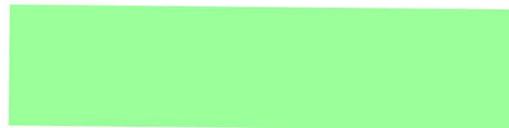
Office: NEW DEHLI, INDIA

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A).

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,

A handwritten signature in cursive script that reads "Michael Shumway".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by Field Office Director, New Delhi, India, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The application is now before the AAO on a motion to reopen. The motion will be granted and the appeal will be sustained.

The applicant is a native and citizen of Pakistan 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 and under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

In a decision, dated February 8, 2013, the field office director concluded that the applicant had failed to submit evidence to show that his spouse would experience extreme hardship as a result of his inadmissibility. In addition, the field office director found that the negative factors in the applicant's case outweigh the positive factors such that a favorable exercise of discretion is not warranted. The application was denied accordingly.

On appeal, counsel asserted that the field office director erred in not considering the applicant's spouse's medical condition and the documentation submitted in support of this condition causing her extreme hardship. Counsel asserted further that the field office director unlawfully misconstrued section 212(a)(9)(B)(v) of the Act when she stated that the applicant had not established extreme hardship to his U.S. citizen spouse as a result of relocation to Pakistan. Counsel stated that this statement is erroneous and irrelevant as a matter of law because the statute did not require the applicant leave the United States to avoid extreme hardship. Counsel submitted a brief and additional hardship evidence with the appeal.

In our decision, dated October 1, 2013, we found that the applicant had established that his U.S. citizen spouse would suffer extreme hardship as a result of his inadmissibility. We found that the applicant had established that his spouse would suffer extreme hardship as a result of separation and as a result of relocation. However, we found that the applicant did not warrant a favorable exercise of discretion as the unfavorable factors in his application outweighed the favorable factors. Specifically, we found the adverse factors in the applicant's case to be his entry into the United States without inspection, his unlawful presence in the United States, as well as his unlawful residence in the United States prior to April 1, 1997; his failure to comply with his order of removal; and his 1997 criminal conviction for Forging Endorsements on Treasury Checks or Bonds or Securities of the United States under 18 U.S.C. §510(b). We then found that the favorable or mitigating factors in the applicant's case were the applicant's U.S. citizen spouse and the extreme hardship to his spouse if his waiver application was denied. We found further that although the applicant's criminal conviction occurred more than 15 years ago, his immigration violations did not. We reiterated that the applicant entered the United States without inspection by crossing the border with Mexico in 1989 and he refused to comply with his 2003 removal order

continuing to reside in the United States until he was arrested by a Fugitive Operations Unit of U.S. Immigration and Customs Enforcement and removed on May 16, 2008. Finally, we found that the record lacked documentation concerning the applicant's character or rehabilitation from his criminal past and disregard for immigration laws.

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 state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 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).

On motion, counsel submits a brief and new evidence, including a new statement from the applicant, and a character reference letter for the applicant from his neighbor in Pakistan. In his statement, the applicant asserts that he warrants a favorable exercise of discretion. He states that although he did not comply with his removal order he did so because he was scared to return to Pakistan because of the instability in the country. He also states that for a portion of his stay in the United States his removal order was pending on appeal and on motion. He states further that while in the United States he paid federal income tax from 1992 to 2007 and that he has no other criminal record before or since his conviction in 1997. Finally, the applicant states that he refrains from drug use, does not drink alcohol, and regularly attends services at his mosque.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(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(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of

proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

...

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Because the applicant's inadmissibility has been discussed in previous decisions and is not being contested in the current motion, we will not address inadmissibility here. Similarly, we have previously found that the applicant established extreme hardship to his U.S. citizen spouse as a result of his inadmissibility, a finding we will not revisit.

As stated above, the issue on motion is whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See *Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance 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.” *Id.* at 300. (Citations omitted).

We find that the record now establishes that the applicant warrants a favorable exercise of discretion. As stated above, the adverse factors in the applicant’s case are his entry into the United States without inspection, the applicant’s unlawful presence, as well as his unlawful residence in the United States prior to April 1, 1997; his failure to comply with his order of removal; and his 1997 conviction.

In accordance with our previous decision and in consideration of the applicant’s motion, we find that the favorable factors in his case include: the applicant’s U.S. citizen spouse and the extreme hardship his spouse would suffer if his waiver application is denied; other family ties to the United States, including a U.S. citizen sister; the fact that his criminal conviction occurred more than 15 years ago and the applicant has no other criminal record; his payment of federal income taxes when he resided in the United States; and the character references from the applicant’s spouse and neighbor. We also note that although we do not condone the applicant’s refusal to comply with his final removal order in 2003, we do take into consideration his claims of fear of return to Pakistan, as well as his attempts to overcome his removal order through the appellate process, and his current compliance with immigration law.

Thus, we find that the favorable factors in the present matter outweigh the negative and we will favorably exercise the Secretary’s discretion. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. See *Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden.

The AAO notes that the applicant’s Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) was denied in the same decision as his waiver application. The Form I-212 was denied solely based on the denial of the Form I-601. As the AAO has now found the applicant eligible for a waiver of inadmissibility, we will withdraw our previous decision on the Form I-212 and render a new decision.

Section 212(a)(9)(A) of the Act states:

Aliens previously removed.-

(A) Certain aliens previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years

in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

On May 16, 2008 the applicant was removed from the United States. As such, he is inadmissible under section 212(a)(9)(A) of the Act and must request permission to reapply for admission.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the same reasons, we find that the applicant's Form I-212 should also be granted as a matter of discretion.

The motion is granted and the appeal sustained.

ORDER: The appeal is sustained.