



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

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

MATTER OF J-Q-V-

DATE: DEC. 4, 2015

APPEAL OF NORFOLK FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Colombia, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Field Office Director, Norfolk, Virginia, denied the application. The matter is now before us on appeal. The appeal will be sustained.

On February 3, 2015, the Director denied the application finding that the Applicant was inadmissible for having been convicted of a crime involving moral turpitude, and had not established that refusal of admission would result in extreme hardship to a qualifying relative.

On appeal, the Applicant submits a brief, and an affidavit from himself, his spouse, and friend, a letter from his mother's doctor, a psychological evaluation, and documents on Colombia.

The evidence of record includes, but is not limited to: the documents on appeal, letters from the Applicant's spouse, mother, friend, sister, pastor, and employer, the Applicant's affidavit, medical and financial documents, a psychological assessment of his spouse, and photographs. The entire record was reviewed and considered in rendering a decision on the appeal. We review these proceedings *de novo*.

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:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

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(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that--

(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 . . .

The record reflects that on [REDACTED], 2007, the Applicant pled nolo contendere and was convicted of credit card fraud in violation of Virginia Code Annotated (Va. Code Ann.) § 18.2-195. He was sentenced to twelve months in jail. The judge suspended his sentence, and ordered that the Applicant be of good behavior for twelve months and pay costs and restitution.

Va. Code Ann. § 18.2-195 states that:

(1) A person is guilty of credit card fraud when, with intent to defraud any person, he:

(a) Uses for the purpose of obtaining money, goods, services or anything else of value a credit card or credit card number obtained or retained in violation of § 18.2-192 or a credit card or credit card number which he knows is expired or revoked;

(b) Obtains money, goods, services or anything else of value by representing (i) without the consent of the cardholder that he is the holder of a specified card or credit card number or (ii) that he is the holder of a card or credit card number and such card or credit card number has not in fact been issued;

(c) Obtains control over a credit card or credit card number as security for debt; or

(d) Obtains money from an issuer by use of an unmanned device of the issuer or through a person other than the issuer when he knows that such advance will exceed his available credit with the issuer and any available balances held by the issuer.

(2) A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a credit card or credit card number by the cardholder, or any agent or employee of such person, is guilty of a credit card fraud when, with intent to defraud the issuer or the cardholder, he:

. . . .

All crimes under Va. Code Ann. § 18.2-195 require an "intent to defraud." Crimes that include as an element an intent to defraud involve moral turpitude. *Matter of Chouinard*, 11 I&N Dec. 839, 841 (BIA 1966); *Matter of Adetiba*, 20 I&N Dec. 506, 508 (BIA 1992). The Applicant's conviction

under Va. Code Ann. § 18.2-195 renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The Applicant does not dispute that credit card fraud is a crime involving moral turpitude but asserts that there was “an unfortunate misunderstanding” between himself and his friend who owned the credit card. In his letter on appeal, the Applicant’s friend stated that “there was a misunderstanding regarding the credit card fraud.” He stated that he and the Applicant exchanged credit cards and agreed to use no more than \$100 from each other’s cards but on one occasion the Applicant took \$210 over the agreed amount and forgot to tell him. The Applicant’s friend indicated that when he looked at his account statement and saw the missing money he filed a claim with the bank and that the bank’s representative encouraged him to press charges. He stated that afterwards, when the Applicant told him that he used the money from the credit card, it was too late to drop the charge.

Although the Applicant’s friend indicates there was a misunderstanding regarding the credit card, we cannot look behind the Applicant’s conviction to reassess his guilt or innocence. *See Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine an alien’s guilt or innocence). Furthermore, the record does not contain any evidence that the conviction was dismissed or expunged due to a legal defect in the underlying criminal proceedings and would no longer be recognized as a conviction for immigration purposes. *See Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006). The Applicant, therefore, remains convicted of credit card fraud for immigration purposes.

Va. Code Ann. § 18.2-195 states that:

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 - (a) Uses for the purpose of obtaining money, goods, services or anything else of value a credit card or credit card number obtained or retained in violation of § 18.2-192 or a credit card or credit card number which he knows is expired or revoked;
 - (b) Obtains money, goods, services or anything else of value by representing (i) without the consent of the cardholder that he is the holder of a specified card or credit card number or (ii) that he is the holder of a card or credit card number and such card or credit card number has not in fact been issued;
 - (c) Obtains control over a credit card or credit card number as security for debt; or
 - (d) Obtains money from an issuer by use of an unmanned device of the issuer or through a person other than the issuer when he knows that such advance will exceed his available credit with the issuer and any available balances held by the issuer.
- (2) A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a credit card or credit card number by the cardholder, or

any agent or employee of such person, is guilty of a credit card fraud when, with intent to defraud the issuer or the cardholder, he:

All crimes under Va. Code Ann. § 18.2-195 require an intent to defraud. Crimes that include as an element an intent to defraud involve moral turpitude. *Matter of Chouinard*, 11 I&N Dec. 839, 841 (BIA 1966); *Matter of Adetiba*, 20 I&N Dec. 506, 508 (BIA 1992). As the Applicant's crime under Va. Code Ann. § 18.2-195 involves an intent to defraud, the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for committing a crime involving moral turpitude.

The Applicant argues, and we concur, that the Director erroneously applied the waiver provision under section 212(i) of the Act rather than section 212(h). Section 212(h) provides that a waiver is available for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude. A waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, child, or parent of the Applicant. Hardship to the Applicant can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883

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(BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Reg'l Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, *et cetera*, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d 1292, 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The Applicant’s spouse asserts that she will experience extreme hardship were she to remain in the United States while the Applicant relocates abroad as a result of his inadmissibility. The Applicant’s spouse states that she has post-partum depression, and since her spouse received a deportation letter she has had anxiety and panic attacks. She indicates that she has a close relationship with the Applicant. She states that the Applicant has a close bond with their child, and is her primary caretaker while she is at work.

In support of the emotional hardship claim, mental health documentation has been provided establishing that the Applicant’s spouse was prescribed medication for postpartum depression and that she has anxiety and panic attacks at the thought of separation from the Applicant. A psychological evaluation states that the Applicant’s spouse had a traumatic childhood and the Applicant provides her with emotional support, and that the physical and mental states of the Applicant’s spouse and child would significantly decline upon separation from the Applicant. The record shows that the Applicant’s child is now [redacted] years old, and in view of her young age she would be emotionally dependent on her father. The emotional impact of separation upon the Applicant’s spouse and child would be considerable, particularly because the Applicant’s spouse would have sole responsibility for the care of their child. Based on a totality of the circumstances, the record

establishes that the Applicant's spouse and child will experience extreme hardship were they to remain in the United States while the Applicant relocates abroad.

Regarding relocation to Colombia, the Applicant's spouse maintains that she does not speak Spanish, has never been to Columbia, and would not be able to cope with being so far away from everything she knows. She indicates that she has a close relationship with the Applicant's family in the United States and is worried that her child would grow up without having any relationship with her extended family. She asserts that she would worry about the quality of her daughter's standard of living, education, health care, and physical safety in Colombia. The Applicant indicates that he has no family or personal contacts in Colombia and as an older worker would have difficulty finding a job, particularly in light of the unstable social, economic, and political environment in Colombia.

The Department of State has issued a Travel Warning for Colombia due to violence linked to drug trafficking. In addition, the record establishes that the Applicant's spouse and child have resided only in the United States, and long-term separation from their family and community will cause them significant hardship. When the factors presented are considered collectively, they demonstrate that the Applicant's spouse and child will experience extreme hardship if they join him to live in Colombia.

The Applicant has established that the bar to his admission would result in extreme hardship to his qualifying relative spouse and child, we now address 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). We must "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." *Id.* at 300.

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The adverse factors in the present case are the Applicant's convictions for credit card fraud, drunk driving, and failure to appear in court.

The favorable factors include the Applicant's U.S. citizen spouse and child, his lawful permanent resident mother, the extreme hardship to his spouse and child if the waiver application were denied, the Applicant's having lived in the United States for 18 years, and letters from family and friends on his behalf. The Applicant has committed no other crimes since his failure to appear conviction in 2010. In this case, when the favorable factors are considered together, they outweigh the adverse factors such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the Applicant has met that burden.

ORDER: The appeal is sustained.

Cite as *Matter of J-Q-V-*, ID# 13666 (AAO Dec. 4, 2015)