



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

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

MATTER OF S-B-

DATE: DEC. 8, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of India, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Director, Nebraska Service Center, denied the application. A subsequent appeal was dismissed by this office and our decision was affirmed on motion. The matter is now before us on a motion to reopen. The motion to reopen will be granted, and the appeal will be sustained.

The record reflects that the Applicant was found to be inadmissible to the United pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The Applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen mother.

The Director concluded that because the Applicant was statutorily inadmissible as a result of his conviction for a crime relating to a controlled substance, no purpose would be served in adjudicating his application for a waiver for crimes involving moral turpitude pursuant to section 212(h) of the Act. The Director denied the Form I-601 accordingly.

On appeal, we determined that the Applicant's [REDACTED] 1997 conviction for Use/Under the Influence of a Controlled Substance, in violation of California Health and Safety Code (H&S) section 11550 constituted a crime related to a controlled substance, rendering him inadmissible under section 212(a)(2)(A)(i)(II) of the Act. Because the Applicant had not shown that his conviction was related to a single offense of simple possession of 30 grams or less of marijuana, we concurred with the Director that the Applicant was statutorily ineligible for a waiver pursuant to section 212(h) of the Act. The appeal was consequently dismissed.

On motion, we noted that as the Superior Court of California vacated the Applicant's conviction for Use/Under the Influence of a Controlled Substance pursuant to Cal. Penal Code § 1016.5 for reasons related to a procedural or substantive defect in the underlying criminal proceedings rather than under a rehabilitative provision, this specific conviction was eliminated for immigration purposes. Nevertheless, we determined that the Applicant's [REDACTED] 2000 and [REDACTED] 2002 convictions for Petty Theft rendered the Applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act. We

concluded that extreme hardship to a qualifying relative had not been established. Our decision to dismiss the appeal was affirmed.

On motion, the Applicant submits a brief, conviction documents, mental and medical health documentation pertaining to his mother, an affidavit from the Applicant's mother, and documentation regarding domestic violence against the Applicant's mother. The entire record was reviewed and considered in rendering this decision.

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

(i) In General

Except as provided in clause (ii), any 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, or
- (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)),

is inadmissible.

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

- (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
  - (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
  - (iii) the alien has been rehabilitated; or
- (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 [Secretary] 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 . . . ; and
- (2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

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, parent or child of the applicant. In the present case, the Applicant's U.S. citizen mother is the only qualifying relative. 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-Moralez*, 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 BIA 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 BIA 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 BIA 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 generally *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 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (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 BIA 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

On appeal, we determined that the Applicant had not established that his U.S. citizen mother would experience extreme hardship were she to remain in the United States while he continued to reside abroad due to his inadmissibility. While we acknowledged the Applicant's mother's contention that she would experience emotional hardship were she to remain in the United States while her son continued residing abroad, the record did not establish the severity of this hardship or the effects on her daily life. We noted that the record established that the Applicant's mother was gainfully employed, did volunteer work, was being treated for her medical conditions, and had a support network which included her daughter, her friends, and her church.

On motion, the Applicant has submitted an updated affidavit from his mother. The Applicant's mother details that she lost her previous job due to budget cuts and as a result of her deteriorating health, she is no longer volunteering. Although she is now working, she contends that her current job pays minimum wage and she is struggling to make ends meet. She further maintains that although her daughter is in the United States, she is married and lives with her husband and she is thus lonely and wants her son by her side. The Applicant's mother also contends that she is worried about her son's well-being in India, as his father and grandmother died, and the people he is living with are not providing for him properly, despite the fact that she sends money to help support him.

In support, mental health documentation has been submitted establishing that the Applicant's mother is being treated for depression. Further, the Applicant has submitted medical documentation to establish that his mother has diabetes mellitus and hyperlipidemia. The Applicant's mother's treating physician confirms that the Applicant's mother's health would improve were the Applicant residing in the United States. The Applicant has also submitted documentation establishing his mother's past abuse at the hands of her husband, which led to his imprisonment and ultimate deportation. Based on a totality of the circumstances, and in light of the past trauma experienced by the Applicant's mother, the Applicant has established that his mother, currently in her 60s, will experience extreme hardship were she to continue to live apart from her son due to his inadmissibility.

In regard to relocating abroad to reside with the Applicant as a result of his inadmissibility, on motion we concluded that were the Applicant's mother to relocate abroad to reside with her son, she would have to leave her home, her friends, her daughter, her church, her gainful employment, her volunteer work, her medical providers, and her community, and such a predicament would cause her extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the Applicant has established that his U.S. citizen mother would suffer extreme hardship were the Applicant unable to reside in the United States. Accordingly, we find that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). This office must then "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. (Citations omitted).

The favorable factors in this matter are the extreme hardship the Applicant's U.S. citizen mother would face if the Applicant were to relocate to India, regardless of whether she accompanied the Applicant or stayed in the United States; the Applicant's family ties in the United States, including the presence of his mother and sister; the Applicant's past community ties in the United States; church membership while residing in the United States; the Applicant's volunteer work since returning to India; the approval of the Applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal; support letters on behalf of the Applicant; and the Applicant's apparent lack of a criminal record since his last conviction in 2002. The unfavorable factors in this matter are the Applicant's failure to depart the United States timely pursuant to the terms of his nonimmigrant visa, periods of unlawful presence while in the United States, the Applicant's in absentia order of deportation, and the Applicant's criminal convictions. While the unfavorable factors are serious in nature, the record establishes on motion that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted.

The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the Applicant has met his burden.

**ORDER:** The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of S-B-*, ID# 14410 (AAO Dec. 8, 2015)