



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

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

MATTER OF S-S-S-

DATE: DEC. 9, 2015

APPEAL OF NEWARK FIELD OFFICE DECISION

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

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

The Director determined that the Applicant was inadmissible for committing a crime involving moral turpitude. The Director concluded that the Applicant had not established that refusal of admission to the United States would result in extreme hardship to a qualifying relative. The Form I-601 was denied accordingly.

On appeal, the Applicant submits a brief, medical records and a mental health evaluation regarding his spouse, financial documentation, and letters from the Assistant U.S. Attorney, the Applicant's spouse, and his stepson. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record establishes that on [REDACTED] 2011, the Applicant was convicted under 18 U.S.C. § 1349, for Conspiracy to Commit Wire Fraud, in the United States District Court of the Eastern District of New York, based on his [REDACTED] 2009 guilty plea. The Applicant was sentenced to probation for five years and was ordered to pay restitution. On appeal the Applicant does not contest the finding that his crime involves moral turpitude. The Applicant requires a waiver under section 212(h) of the Act.

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 –

(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; or

...

A waiver of inadmissibility under section 212(h) 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, son or daughter of the applicant. The Applicant's U.S. citizen spouse and son are the only qualifying relatives in this case. 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 U.S. Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The definition of extreme hardship “is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists “only in cases of great actual and prospective injury. . . [,] and while an analysis of a given application includes a review of all claims put forth in light of the facts and circumstances of a case, such analysis does not extend to discovery of undisclosed negative impacts.” *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). The common consequences of removal or refusal of admission, which include “economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment” are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); *see also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship). Nevertheless, all “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

The Applicant's spouse asserts that she will experience extreme hardship if she remains in the United States while the Applicant resides abroad as a result of his inadmissibility. She declares that she and the Applicant have been married for over a decade, and she has a close relationship with him. She further states that the Applicant has a close relationship with her son from a prior relationship. The Applicant's spouse indicates she stopped working as a hairdresser because she has chronic neck pain and knee bursitis. She conveys that her health has deteriorated and she now relies on the Applicant to assist her to dress and eat and manage her home. She maintains that she is

depressed and overwhelmed at the thought of the Applicant's imminent deportation, and is worried that he will be in danger in Egypt. She declares that were the Applicant to relocate abroad, she would not be able to pay her monthly expenses or visit the Applicant. The Applicant's son asserts that his mother is barely able to walk and would be devastated if separated from the Applicant.

In support of the emotional and financial hardship, the Applicant's spouse has provided medical documentation establishing that she suffers from two herniated discs and partial fusion of 2 other discs. The documentation also establishes that the Applicant's spouse is unable to work and is receiving ongoing physical therapy. In addition, the Applicant's spouse has submitted a mental health assessment that states that she has depression and increasing anxiety about separation from the Applicant. The evaluator recommends that she consult with a psychological/psychiatric professional. The Applicant's spouse has also provided a 2014 joint income tax return establishing that the Applicant is the sole financial provider for the family. In this case, the record demonstrates that the Applicant provides significant financial and emotional support to his spouse, and she will experience extreme hardship were she to remain in the United States while the Applicant resides abroad.

Regarding relocation abroad with the Applicant as a result of his inadmissibility, the Applicant's spouse asserts that she is a Christian and would be in danger in Egypt, and political turmoil would make it difficult for the Applicant to support her. She further asserts that in Egypt she would not be able to obtain or afford effective medical treatment for her medical conditions. The Applicant has submitted documentation regarding the problematic country conditions in Egypt. The Applicant has also provided documentation demonstrating the cost of living in Egypt and that the per capita gross domestic product was \$6,700. Furthermore, documentation from the Applicant's spouse's physician establishes that her medical condition has not improved and she will require surgery.

The record establishes that the Applicant's spouse was born in the Dominican Republic and has resided in the United States for over two decades. The record evidences that she has no ties to Egypt. Long-term separation from her community, her son, her extended family, and the affordable and effective medical professionals familiar with her treatment plan will cause her considerable hardship. When the evidence is considered together, the record establishes that the Applicant's spouse will experience extreme hardship if she were to relocate abroad with the Applicant.

The Applicant has established that the bar to admission would result in extreme hardship to his qualifying relative spouse. We now turn to a consideration of whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (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 (citations omitted). In evaluating whether to favorably exercise 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, recency 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).

Id. at 301 (citations omitted). We must also consider “[t]he underlying significance of the adverse and favorable factors.” *Id.* at 302. For example, we assess the “quality” of relationships to family, and “the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed].” *Id.* (citation omitted).

The favorable factors in this matter are the extreme hardship the Applicant's U.S. citizen spouse and son would face if the waiver application were denied, the Applicant's long-term residence in the United States, business ownership, letters in support on the Applicant's behalf, the Applicant's community involvement, and the government's letter referencing the Applicant's assistance in shutting down a mortgage fraud ring and obtaining convictions of four perpetrators of financial fraud. The unfavorable factors are the nature and recency of the Applicant's criminal conviction; the absence of documentation in the record to establish that the Applicant has complied with his sentence, including probation for a period of five years and restitution; and the Applicant's periods of unlawful presence and employment in the United States. We find that the Applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

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 not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-S-S-*, ID# 14375 (AAO Dec. 9, 2015)