



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

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

MATTER OF C-S-G-

DATE: DEC. 16, 2015

APPEAL OF NORFOLK OFFICE DECISION

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

The Applicant, a native and citizen of China, 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.

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, affidavits from the Applicant, his spouse, and his son, letters in support, information about country conditions in China, and a psychological report of the Applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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(h) of the Act provides in relevant part:

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

...

- (1) (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

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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. . . .

The record establishes that on [REDACTED] 2009, the Applicant pleaded guilty to and was convicted, under Missouri Revised Statutes § 541.155, of Fraudulent Use of Credit Device. The Applicant was sentenced to four months confinement. 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.

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 children 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 U.S. citizen spouse asserts that she will experience extreme hardship if she remains in the United States while the Applicant relocates abroad as a result of his inadmissibility. She

declares that she and the Applicant have been together since 1991, and married since 2002, and she has a close relationship with him. She further contends that she stopped working because of chronic leg pain and increasing depression since the denial of the Applicant's residency. She further asserts that she is worried that when she is able to return to work, her monthly income of \$800 will not be enough to cover her rent and monthly household expenses of \$1,628. She maintains that she and the Applicant have always combined their incomes to meet expenses. The Applicant's spouse also contends that she relies on the Applicant to help her cope with depression and is overwhelmed at the thought of his imminent deportation. She indicates that will be worried about the Applicant's relocation because he has no social or family ties to China and will be alone. In his own declaration, the Applicant contends that his spouse is not well and he is needed to take care of her.

In support of the emotional and financial hardship, the Applicant has provided a mental health evaluation which states that his spouse has had increasing anxiety and depression about the Applicant's possible deportation. The evaluator further recommends that the Applicant's spouse have psychotherapy and consider antidepressant medication. In addition, the Applicant provided a letter from his employer which states that the Applicant is a full-time chef and his monthly income is \$2,500, and the Applicant's spouse is a part-time cashier and is paid \$8.00 an hour. The record also contains evidence of the Applicant's spouse's income and expenses, including her rent. In this case, the record demonstrates that the Applicant provides considerable 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 has lived in the United States for over 30 years, all of her family members live in the United States, and she has no social or family ties to China. She contends that she will need treatment for depression, and is worried that in China mental health professionals would be either unavailable or would provide substandard care. The Applicant's son asserts that the Applicant has lived in the United States for 30 years and will not be able to find a job in China. His son, specifically, states that the Applicant is not well-educated, is too old for manual labor, and will not be able to support himself in China. In support, the Applicant has submitted documentation which indicates that there is an increasing demand for mental health care in China, and qualified mental health practitioners are few.

The record establishes that the Applicant's U.S. citizen spouse, currently in her 50s, has resided in the United States for over three decades, and long-term separation from her community, her relatives, most notably her children, mother, and siblings, and the qualified mental health professionals familiar with her diagnosis and treatment plan, will cause her significant 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-Moralez*, 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 sons would face if the waiver application were denied, the Applicant’s community and family ties to the United States, his long-term residence in the United States, the Applicant’s payment of taxes, gainful employment in the United States, and the support letters on the Applicant’s behalf. The unfavorable factors are the Applicant’s entry into the United States without inspection, admission, or parole; the Applicant’s placement in removal proceedings; his failure to depart pursuant to a voluntary departure order; the Applicant’s conviction as detailed above; and his periods of unlawful presence and employment in the United States. In this case, when the favorable factors are considered together, they outweigh the adverse factors such that a favorable exercise of discretion is warranted.

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In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has met that burden.

ORDER: The appeal is sustained.

Cite as *Matter of C-S-G-*, ID# 14993 (AAO Dec. 16, 2015)