



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

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

MATTER OF I-E-F-D-

DATE: DEC. 16, 2015

APPEAL OF CHARLOTTE FIELD OFFICE DECISION

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

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

The Applicant 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 been convicted of a crime involving moral turpitude. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act in order to remain in the United States with her U.S. citizen spouse and children.

In a decision dated February 24, 2015, the Director determined that the Applicant had not established extreme hardship to a qualifying relative. The Form I-601 was denied accordingly.

The Applicant contends on the Form I-290B, Notice of Appeal or Motion, that the USCIS abused its discretion in denying the waiver application and did not assess harm to her children. The Applicant further indicates on the Form I-290B that a brief and additional evidence will be submitted within 30 days. However, as of today, no additional documentation in support of the instant appeal has been received. The record is thus considered complete and was reviewed and considered in its entirety in rendering this decision.

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 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 reflects that in 2004, the Applicant was convicted by the State of Maryland of Fraud Per Identity Information Theft, in violation of Maryland Code section 8-301(b). He was sentenced to 18 months with 17 months suspended, a period of probation, and fines. Based on this conviction the Director found the Applicant inadmissible for having been convicted of a crime involving moral turpitude.

At the time of the Applicant's conviction the Maryland Criminal Law stated:

§ 8-301. Identity fraud

Prohibited—Obtaining personal identifying information without consent

(b) A person may not knowingly, willfully, and with fraudulent intent possess, obtain, or help another to possess or obtain any personal identifying information of an individual, without the consent of the individual, in order to use, sell, or transfer the information to get a benefit, credit, good, service, or other thing of value in the name of the individual.

As the Applicant has not disputed on appeal that her conviction is for a crime involving moral turpitude, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the Director.

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, 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

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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).

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 record reflects that the Applicant’s children were born in [REDACTED] and that the Applicant’s U.S. citizen spouse was sentenced to life in prison following an [REDACTED] 2005 conviction for Murder in the First Degree and Use of a Handgun in the Commission of a Crime of Violence. Affidavits from relatives of the Applicant assert that she has a strong bond with her children for whom she works to provide and care for, that she is active in her children’s lives, that her children are accustomed to a structured environment with her, and that they would be lost without her.

Documents submitted to the record establish that the Applicant’s oldest son, born in [REDACTED] has been diagnosed with Attention Deficit Hyperactivity Disorder with progress notes from a physician dated May 13, 2014, indicating that he was prescribed medication and referred for behavioral counseling. A behavioral assessment by a school psychologist, dated April 14, 2014, indicates that the Applicant’s son had behavior incidents including general disruption and aggressive behavior, and has been placed in an alternative program. Other documents submitted to the record include school reports, certificates, and awards for the Applicant’s other two children.

The record establishes that the Applicant is the sole caregiver and provider to her three children while her spouse serves a life sentence. Supporting evidence from affidavits and school records indicates the Applicant’s support and involvement in their lives. Here we find the record sufficient to establish that the Applicant’s children would experience extreme hardship if separated from the Applicant.

We also find the record to establish that the Applicant's children would experience extreme hardship if they were to relocate to Sierra Leone to reside with the Applicant. The affidavits from the Applicant's relatives contend that in Sierra Leone it is difficult to find jobs, that the education system lacks funding or support from the government, that children roam the streets scamming or begging, and that any mental and physical needs of the Applicant and her children would not be adequately met. In support, the Applicant has submitted documentation regarding problematic country conditions in Sierra Leone, most notably, crime and human rights concerns.

The record establishes that the Applicant's three children are fully integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). We find *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the Applicant's children at this stage of their education and social development and relocate to Sierra Leone would constitute extreme hardship to them. The Applicant has thus established that her children would suffer extreme hardship were they to relocate abroad to reside with the Applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the Applicant has established that her U.S. citizen children would suffer extreme hardship were the Applicant unable to reside in the United States. 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).

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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 children would face, regardless of whether they accompany the Applicant or stay in the United States; community ties; letters of support on behalf of the Applicant; her gainful employment; the payment of taxes; and the Applicant’s apparent lack of a criminal record since her 2004 conviction, more than a decade ago. The negative factors are the Applicant’s 2004 conviction for fraud, as discussed in detail above, and periods of unlawful presence and employment in the United States. Although the Applicant’s immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted.

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 been met.

ORDER: The appeal is sustained.

Cite as *Matter of I-E-F-D-*, ID# 14622 (AAO Dec. 16, 2015)