



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

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

MATTER OF E-I-Q-

DATE: DEC. 16, 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 Ecuador, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Director of the Newark 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 crimes involving moral turpitude. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his U.S. citizen spouse. He filed a Form I-601 pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse and child.

In a decision dated February 12, 2015, the Director determined that the record contained insufficient evidence to establish that extreme hardship would be imposed on the Applicant's spouse and son if the Applicant were denied admission into the United States and they remained here, or they relocated with him to Ecuador. The Form I-601 was denied accordingly.

On appeal, the Applicant does not contest that he has been convicted of crimes involving moral turpitude. He asserts, however, that the record establishes that his U.S. citizen spouse and son would experience extreme hardship if he were denied admission into the United States. The Applicant also indicates that the evidence demonstrates that a favorable exercise of discretion is merited in his case. In support of his assertions, the record includes statements from the Applicant's spouse, psychological evaluation and medical evidence, school documentation and country conditions evidence, and documentation establishing relationships and identity.

The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

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- (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, that:

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

The record reflects that the Applicant has the following criminal history:

On [REDACTED] 1993, the Applicant was convicted of shoplifting in violation of New Jersey Statutes Annotated (N.J.S.A.) § 2C:20-11.

On [REDACTED] 1995, the Applicant was convicted of conspiracy to defraud the United States, in violation of 18 U.S.C. § 371. In addition, the Applicant was convicted of aiding and abetting submission of fraudulent documents to INS, in violation of 18 U.S.C. § 1546(a).

On [REDACTED] 2006, the Applicant was convicted of shoplifting, in violation of N.J.S.A. § 2C:20-11(b)(1).

The Applicant was also convicted of simple assault, in violation of N.J.S.A. § 2C:12-1(a), on [REDACTED] 1993 and on [REDACTED] 2006.

The applicant does not dispute that he has been convicted of crimes involving moral turpitude, and the record does not show the finding of inadmissibility to be erroneous. We will therefore not disturb the finding of the Director that the Applicant is inadmissible under section 212(a)(2)(A)(i) of the Act.

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 son or daughter of the applicant. The record establishes that the Applicant's U.S. citizen spouse and son are 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 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 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 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

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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.

The Applicant's qualifying relatives are his U.S. citizen spouse and child. To establish that his spouse and child would experience extreme hardship if he were denied admission and they remained in the United States, the Applicant submits affidavits and letters, psychological and medical records, and school documentation.

The Applicant's spouse states in an affidavit dated April 21, 2014, that she and the Applicant have lived together since 1998, they have been married since [REDACTED] 2000, and they have a [REDACTED]-year-old son together. The Applicant's spouse discusses her medical conditions, and she states that her conditions require monitoring and that she is on medication. She states further that she experiences anxiety, vertigo, migraine headaches and depression due to her medical conditions. In addition, the Applicant's spouse states that the Applicant and their son are best friends and that their son would be devastated if he were separated from the Applicant. She also asserts that the Applicant makes their son's breakfast and helps him take daily medication for asthma, and that the Applicant takes their son to school, his doctor appointments, and his sports activities. The Applicant's spouse indicates further that her mother is ill and stays with their family on weekends, and that her mother relies on the Applicant for assistance.

Medical evidence corroborates that the Applicant's son has been prescribed medication for asthma. Medical evidence also demonstrates that the Applicant's spouse has received medical treatment for migraines, vertigo, kidney removal, hepatitis C, a noncancerous pituitary tumor, bladder-related issues, and sinus infections and that she has been to the hospital emergency room several times for headaches, dizziness, and vertigo. The evidence states further that the Applicant's spouse requires constant medical supervision, and that the Applicant's presence is important in assisting in the management and support of his spouse's condition.

A June 20, 2015, psychological evaluation by a licensed professional counselor reflects the Applicant's spouse's statements that the Applicant drives her to work, due to her vertigo and safety concerns, and that he drives her to the hospital when her vertigo or migraine symptoms become severe. The evaluation also reflects that, due to the Applicant's spouse's health conditions, the Applicant is the primary caretaker for their son. In addition, the evaluation states that the Applicant's son is anxious and concerned about the possible loss of his father, and that the

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Applicant's spouse and son would experience serious psychological stress and disruption to their lives if the Applicant were removed from the country.

Letters from the Applicant's son's martial arts instructor and from staff at the Boys & Girls Club that his son attends attest to the Applicant's involvement in his son's activities and the Applicant's dedication and commitment towards his son.

Upon review, the cumulative evidence in the record is sufficient to establish that the Applicant's spouse would experience hardship beyond that normally experienced upon inadmissibility of a family member if she remains in the United States separated from the Applicant. The evidence demonstrates that the Applicant's spouse suffers from several serious medical conditions that require medical supervision and that the Applicant's presence is important in assisting in the management and support of his spouse's condition. The record reflects that the Applicant's spouse relies on the Applicant to provide transportation for her to go to work and to the hospital when she requires treatment for her medical conditions. In addition, the evidence demonstrates that the Applicant is the primary caretaker for their son, and that the Applicant's spouse relies on the Applicant to bring their son to school, his doctor appointments and his activities. The evidence also reflects that the Applicant's spouse would experience psychological stress if she and their son were separated from the Applicant. Considered in the aggregate, the applicant has demonstrated that the cumulative effect of the hardships that his spouse would experience if she remained in the United States without the Applicant rise to the level of extreme hardship.

The Applicant has also established that his spouse would experience hardship beyond that normally experienced upon inadmissibility of a family member if she relocated to Ecuador. The record reflects that the Applicant has serious medical conditions and that she would lose the ongoing care she receives from her doctors in the United States if she relocated to Ecuador with the Applicant. Further, while country conditions evidence reflects that adequate medical care is available in major cities in Ecuador, the evidence reflects that medical services in smaller communities are limited, the quality of services is generally below U.S. standards, and the availability of some medications is sporadic and ambulances are in short supply. In addition, the record reflects that the Applicant's spouse is from the Dominican Republic and has never been to Ecuador. The record also reflects that the Applicant's spouse's mother is in the United States, and in her affidavit the Applicant's spouse expresses concern that her mother relies on her assistance and would be devastated if she moved with the Applicant to Ecuador. The Applicant's spouse also expresses concern that her son has many friends, has not lived outside of the United States, and would be devastated if he had to move away from their home. Taken together, the evidence in the record is sufficient to establish that the Applicant's spouse would suffer extreme hardship if she relocated with the Applicant to Ecuador.¹

The Applicant has also established that he merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of

¹ As the record establishes extreme hardship to the Applicant's spouse, we need not address whether the Applicant has also established extreme hardship to his son, who is also a qualifying relative under section 212(h) of the Act.

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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 section 212(h) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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).

The unfavorable factors in this case are the Applicant's convictions for shoplifting, simple assault, and aiding and abetting submission of fraudulent documents and conspiracy to defraud the United States. The favorable factors in this case are the hardship that the Applicant's U.S. citizen spouse and child would face if the Applicant were denied admission into the country, the Applicant's residence in the United States for over 25 years, letters attesting to the Applicant's good character, the Applicant's history of employment and payment of taxes in the United States, and evidence that the Applicant has not been convicted of a crime since 2006, nine years ago. Upon review, the positive factors in this case outweigh the negative factors, such that a favorable exercise of discretion is warranted.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. *See* 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 E-I-Q-*, ID# 14033 (AAO Dec. 16, 2015)