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

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

MATTER OF A-A-M-

DATE: NOV. 17, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of Armenia, 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. The matter is now before us on appeal. The appeal will be sustained.

The Applicant entered the United States as a refugee on December 12, 1990. He was granted lawful permanent resident status on May 28, 1992. The record establishes that on [REDACTED] 1998, the Applicant was convicted of Conspiracy to Alter and Remove Vehicle Identification Numbers and To Traffic in Certain Motor Vehicle Parts (18 U.S.C. §§ 317, 511, and 2321), six counts of Trafficking in Motor Vehicles and Motor Vehicle Parts (18 U.S.C. § 2321), and Collection of Extension of Credit by Extortionate Means (18 U.S.C. § 894). The Applicant was subsequently charged with deportability for committing an aggravated felony after admission as a lawful permanent resident and ordered removed. He was removed on August 9, 2003. The Applicant seeks a waiver of inadmissibility under section 212(h) to reside in the United States with his U.S. citizen spouse, children, and parents.

The Director determined that the Applicant was inadmissible under 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 Director further noted that the Applicant was statutorily ineligible for a waiver of inadmissibility as a result of having been convicted of an aggravated felony after admission to the United States as a lawful permanent resident. Finally, the Director determined that the Applicant did not merit a favorable exercise of discretion. The Director denied the Form I-601 accordingly.

On appeal, the Applicant submits a brief, a supplemental brief, a letter, and copies of non-precedent decisions. 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.

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 –

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that--

- (i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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 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

(2) the Attorney General, 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.

[N]o waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

The term “aggravated felony” includes “an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year.” Section 101(a)(43)(R) of the Act. In the supplemental brief, the Applicant asserts that although he committed an aggravated felony, he is eligible to apply for a waiver of inadmissibility under section 212(h) of the Act. In support, the Applicant references *Matter of J-H-J-*, 26 I&N Dec. 563 (BIA 2015).

In a May 12, 2015 decision, the Board of Immigration Appeals (Board), citing “the overwhelming circuit court authority” and the importance of “uniformity in the application of the immigration laws,” determined that a foreign national who adjusted status in the United States, and who had not entered as a lawful permanent resident, is not barred from establishing eligibility for a waiver of inadmissibility under section 212(h) of the Act as a result of an aggravated felony conviction. *Matter of J-H-J-*, 26 I&N Dec. 563, 564-5 (BIA 2015) (citing *Matter of Small*, 23 I&N Dec. 448, 450 (BIA 2002)). The Board held that section 212(h) of the Act only precludes foreign nationals who entered the United States as lawful permanent residents from establishing eligibility for a waiver due to an aggravated felony conviction, withdrawing from its decisions in *Matter of Koljenovic*, 25 I&N Dec. 219 (BIA 2010), and *Matter of E.W. Rodriguez*, 25 I&N Dec. 784 (BIA 2012). The record establishes that the Applicant adjusted status in the United States on May 28, 1992, rather than entering the United States as a lawful permanent resident. He is thus eligible for a waiver of inadmissibility under section 212(h) of the Act.

As the above-referenced crimes involving moral turpitude occurred more than fifteen years ago, we first consider whether the Applicant is eligible for a waiver of inadmissibility under section 212(h)(1)(A) of the Act. Section 212(h)(1)(A) requires that the Applicant establish that his admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated.

The Applicant has provided evidence establishing that the Applicant and his U.S. citizen spouse married in 1984, over thirty years ago. They have eight U.S. citizen children. The Applicant and his spouse entered the United States as refugees. The Applicant has established significant long-term family and community ties in the United States. However, while the Applicant resided in the United States for over a decade, six of those years were spent in prison. Further, many of the letters submitted in support of the contention that the Applicant is of good moral character were based on relationships formed with the Applicant from before his 1998 conviction and thus, the probative value of the letters in establishing his rehabilitation post-conviction are diminished. Based on the evidence in the record, the Applicant has not established that he has been rehabilitated. Accordingly, the Applicant has not shown that he meets the requirement of section 212(h)(1)(A)(iii) of the Act.

We next make a determination as to whether the Applicant has established eligibility for the grant of a waiver under section 212(h)(1)(B) of the Act. Section 212(h) provides that a waiver is available for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude. The section 212(h) waiver is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. If extreme hardship to the qualifying relative is established, the Secretary then assesses

whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296 (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 *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 (Reg’l 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 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. I.N.S.*, 138 F.3d 1292, 1293 (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 record establishes that the Applicant's U.S. citizen spouse and U.S. citizen parents will experience extreme hardship if they were to remain in the United States while the Applicant continues to reside abroad as a result of his inadmissibility. The Applicant's spouse maintains that she has ongoing depression, migraine headaches, insomnia, and anemia as a result of separation from the Applicant. She declares that since the Applicant left the country in August 2003, she has had to care for her eight children alone, and is concerned about the impact of further separation from the Applicant on their sons and daughters. In support of the emotional hardship claim, mental health documentation has been provided establishing that the Applicant's spouse takes medication for depression and migraine headaches. The Applicant's U.S. citizen mother maintains that she has a close relationship with the Applicant and became depressed when he left the country. She indicates that she and the Applicant's father have mental health disorders and need the Applicant's support. In support of the emotional hardship claim, mental health documentation has been providing establishing that the Applicant's mother is being treated for anxiety, depression, migraine headaches, and that the Applicant's presence would be helpful in mitigating his mother's anxiety and depression. The mental health documentation also establishes that the Applicant's father is being treated for schizophrenia and depression. Based on a totality of the circumstances, the record establishes that the Applicant's spouse and parents will experience extreme hardship were they to remain in the United States while the Applicant continues to reside abroad.

Regarding relocation to Armenia, the Applicant's spouse indicates that she would be depressed if she were forced to separate from her sons and daughters in the United States. The Applicant's spouse and mother maintain that their living standard would be significantly lower in Armenia, and they would lose the care of the doctors who have been treating them, and they would not be to find employment which would pay enough to afford healthcare. The Applicant's spouse also asserts that the Applicant will not be able to provide for them because he does not earn enough to support himself. Financial documentation has been provided establishing that money was sent to the Applicant in 2012 and 2013. In addition, the Applicant has submitted numerous articles about the lack of quality healthcare and the problematic economy in Armenia. Further, the record reflects that the Applicant's spouse was granted refugee status in the United States and his parents were granted asylum in the United States. Based on the totality of the circumstances, the record establishes that the Applicant's spouse and parents will experience extreme hardship if they relocate abroad to reside with the Applicant due to his inadmissibility.

The Applicant has established that the bar to his admission would result in extreme hardship to his U.S. citizen spouse and parents. We now address whether the Applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the Applicant 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*, 21 I&N Dec. 296, 301 (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.

The adverse factors in the present case are the Applicant's criminal convictions after acquiring lawful permanent resident status, the nature and severity of his crimes, his long term of imprisonment, and his removal from the United States. The favorable factors include the emotional and financial hardship to his U.S. citizen spouse, eight children, and parents, as discussed in detail above; the length of marriage between the Applicant and his spouse; the Applicant's past residence in the United States for over a decade; past refugee status of the Applicant, his spouse and his children; the Applicant's employment while residing in the United States; the Applicant's apparent lack of a criminal record since returning to Armenia in 2003; positive progress while serving his time in prison, as evidenced by the Program Review Report and the certificate of completion issued to the Applicant for completing a leather class; the Applicant's statement expressing remorse and regret for his criminal actions; the passage of more than seventeen years since the Applicant's criminal convictions; and numerous support letters on the Applicant's behalf.

The crimes and immigration violations committed by the Applicant were serious in nature. Nonetheless, we find that the Applicant has established that the favorable factors outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted

**ORDER:** The appeal is sustained.

Cite as *Matter of A-A-M-*, ID# 13717 (AAO Nov. 17, 2015)