



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

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

MATTER OF A-N-

DATE: NOV. 19, 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 Field Office Director, 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 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 Applicant is the beneficiary of an approved self-petitioning Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant as the spouse of an abusive U.S. citizen or lawful permanent resident. The Applicant is also the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on her behalf by her daughter. The Applicant seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her U.S. citizen children.

In a decision dated November 13, 2014, the Director determined that the Applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly.

On appeal the Applicant asserts that USCIS erred in concluding that she had not provided evidence of extreme hardship and did not give adequate weight to submitted documents. With the appeal the Applicant submits a brief; updated statements from her daughter, her son, and herself; biographic documentation; documentation of academic achievement and awards for her son; and country information for Ecuador. The entire record was reviewed and considered 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.

(b)(6)

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Section 212(h) of the Act provides that certain grounds of inadmissibility under section 212(a)(2)(A)(i)(I) and (II), (B), (D) and (E) of the Act may be waived 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
 - (C) the alien is a VAWA self-petitioner; and
- (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.

The record reflects that the Applicant has convictions for shoplifting in 1987 and 1990 under New Jersey statutes section 2C:20-11, for receiving stolen property in 1987 under New Jersey statutes section 2C:20-7, and for prostitution in [REDACTED] and [REDACTED] 2001 under New York Penal Law section 230. Based on this information the Director determined the Applicant is inadmissible for having been convicted of crimes involving moral turpitude. As the Applicant has not disputed on appeal that she has been convicted of crimes involving moral turpitude, and the record does not show the findings of inadmissibility to be erroneous, we will not disturb the findings of the Director.

As noted above, a waiver of section 212(a)(2)(A)(i) inadmissibility is available to individuals classified as battered spouses under section 204(a)(1)(A)(iii) of the Act. As outlined above, a Form I-360 Petition for Amerasian, Widow or Special Immigrant as a self-petitioning battered spouse of a United States citizen under the Violence Against Women Act was approved on behalf of the Applicant in April 2010. As such, the Applicant is eligible to apply for a waiver of inadmissibility under section 212(h)(1)(C) of the Act, which provides that a beneficiary of a VAWA

self-petition is not required to demonstrate extreme hardship to a qualifying relative, but may be granted a waiver of inadmissibility as an exercise of discretion.

In discretionary matters, the alien 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). This office must then, "[B]alance 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).

On appeal the Applicant asserts that her arrests were related to an extended period of domestic violence that she survived, that she was struggling to support her children and that she regrets her mistakes. She asserts that she raised her children without any assistance and is their primary emotional and financial support. The Applicant states that her daughter and her two children live with the Applicant and that the daughter depends on her for financial support and child care so she can work. The Applicant references that her son is the recipient of many awards and attends a college where academic demands mean he is unable to work, so he depends on her for basic needs.

In their affidavits the Applicant's daughter and son describe the abusive treatment of the Applicant that they witnessed as children and how the Applicant struggled to raise them. The daughter contends that she would be devastated if the Applicant is taken away and that she could not emotionally handle the loss. The Applicant's son asserts that he grew up in a dangerous neighborhood of crime, gangs, and drugs, but made it to college due to the support of the Applicant who instilled values in him. He states that he gained his desire to help others and his determination

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to achieve due to the Applicant and that he goes to her for advice, support, and encouragement because she keeps him motivated.

The adverse factors in this case are the Applicant's multiple convictions, as noted above, and periods of unlawful presence in the United States. The favorable factors in this matter are the Applicant's long-time residence in the United States; approval of her Form I-360 self-petition as an abused spouse; approval of the Form I-130 on her behalf; the Applicant's U.S. citizen children and grandchildren; letters of support from her family; the hardships that the Applicant's family would face if she were not present in the United States; the Applicant's expressed remorse for her past criminal activity; and the passage of more than 14 years since the Applicant's most recent conviction.

The crimes committed by the Applicant were serious in nature. Nonetheless, upon review of all the factors in the Applicant's case we find that she has established that the favorable factors outweigh the unfavorable factors and therefore demonstrate that the Applicant merits a waiver as a matter of discretion under 212(h)(1)(C) of the Act.

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 A-N-*, ID# 14272 (AAO Nov. 19, 2015)