



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

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

MATTER OF R-A-M-

DATE: SEPT. 17, 2015

APPEAL OF PHILADELPHIA FIELD OFFICE DECISION

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

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

The Applicant was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having gained admission to the United States by fraud or a material misrepresentation. The Applicant was also found inadmissible to the United States under section 212(a)(2)(A)(i)(I) of 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-360, Petition for Amerasian, Widow, or Special Immigrant. The Applicant is the father of two U.S citizen children and seeks a waiver of inadmissibility to remain in the United States.

In a decision dated June 2, 2014, the Field Office Director found that the Applicant had not established that he or his qualifying relatives would suffer extreme hardship as a result of his inadmissibility. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

On appeal, the Applicant states that he was a minor at the time he used his brother's immigration documents to enter the United States and that although the Field Office Director cites to section 212(a)(6)(C)(i) of the Act, she never explicitly states that he is inadmissible under this section of the Act. The Applicant states that he is not subject to section 212(a)(6)(C)(i) of the Act because, as a minor, he could not have knowingly made a material misrepresentation. Furthermore, the Applicant states that he was never convicted for immigration purposes, as the term "conviction" is defined in section 101(a)(48)(a) of the Act, because although he pled guilty to the charges against him, he was placed in a pretrial intervention program and a punishment was never imposed.

The record includes, but is not limited to: a statement from the Applicant, a psychological evaluation with two letters from the evaluating counselor, financial documents, letters from community organizations with whom the Applicant volunteers, a letter from the Applicant's friend, a letter from the Applicant's estranged wife, court documentation regarding the custody of the Applicant's

(b)(6)

*Matter of R-A-M-*

children, a police report from an incident involving the Applicant's wife, and photographs of the family. The entire record was reviewed and considered in arriving at a decision on appeal.

We will first address the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. 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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

§ 101(a)(48)(A) of the Act states:

The term “conviction” means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The record indicates that on [REDACTED] 2002, the Applicant pled guilty to the following charges: Unlawful Possession of a Handgun in the Third Degree under New Jersey Statutes Annotated (N.J.S.A.)

(b)(6)

*Matter of R-A-M-*

2C:58-4; Obstruction of Justice in the Fourth Degree under N.J.S.A. 2C:29-1a; and Hindering Prosecution under N.J.S.A. 2C:29-3b(4). The Applicant pled guilty to these charges as part of a pre-trial intervention program. The record establishes that the Applicant was subjected to supervisory treatment for 12 months while his court proceedings were postponed and that he was required to report to the [REDACTED] Probation Department. In addition, in a sworn statement dated [REDACTED] 2010, the Applicant states that he was placed on probation for one year as a result of these charges. Thus, the assertions regarding the Applicant not being punished are unfounded. The Applicant was placed on probation for 12 months. Where an individual pleads guilty or nolo contendere, or is found guilty, but entry of the judgment is deferred by the court to allow for a period of probation or completion of a diversion program, the individual has been convicted for immigration purposes even if the charges are later dismissed. See *Matter of Marroquin-Garcia*, 23 I&N Dec. 705, 714-15 (A.G. 2005); *Matter of Roldan-Santoyo*, 22 I&N Dec. 512 (BIA 1999). Therefore, the Applicant was convicted for immigration purposes.

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

For cases arising in the Third Circuit, the determination of whether a conviction is a crime involving moral turpitude requires a categorical inquiry into “the elements of the statutory state offense . . . to ascertain the least culpable conduct necessary to sustain conviction under the statute.” *Jean-Louis v. Holder*, 582 F.3d 462, 465-66 (3d Cir. 2009) (citing *Knapik v. Ashcroft*, 384 F.3d 84, 88 (3d Cir. 2004)). The “inquiry concludes when [the adjudicator] determine[s] whether the least culpable conduct sufficient to sustain conviction under the statute ‘fits’ within the requirements of a [crime involving moral turpitude].” *Jean-Louis, supra*, at 470.

At the time of the Applicant’s conviction, N.J.S.A. 2C:29-3b stated, in pertinent part:

b. A person commits an offense if, with purpose to hinder his own detention, apprehension, investigation, prosecution, conviction or punishment for an offense or violation of Title 39 of the New Jersey Statutes or a violation of chapter 33A of Title 17 of the Revised Statutes, he:

....

- (4) Gives false information to a law enforcement officer or a civil State investigator . . . .

In *Padilla v. Gonzales*, the Seventh Circuit held that obstruction of justice under Illinois criminal statutes involves moral turpitude. 397 F.3d 1016, 1021 (7th Cir. 2005). The defendant in *Padilla v. Gonzales* was charged with giving officers a false name and driver's license when stopped for a traffic violation in order to prevent his arrest for driving with a revoked license. *Id.* at 1019. The Seventh Circuit noted that "knowingly furnishing false information . . . specifically entails dishonesty and thus implicates moral turpitude." *Id.* at 1020. Thus, the Applicant's conviction under N.J.S.A. 2C:29-3b(4) involved moral turpitude. Although the Applicant only served probation for this offense, the offense carries a maximum penalty of 18 months in jail, so it would not meet the petty offense exception. Because this offense is for a crime involving moral turpitude and it does not meet the petty offense exception, no purpose would be served in determining whether the Applicants other convictions also meet the definition of a crime involving moral turpitude. Therefore, the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act and requires a waiver under section 212(h) of the Act.

Section 212(h) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security (Secretary)] 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 [Secretary] that

--

- (i) . . . 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[.]

Section 212(h)(1)(A) of the Act provides that the Secretary may, in his discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if the activities for which the Applicant is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

Since the events which led to the Applicant's criminal convictions for which the Applicant was found inadmissible occurred more than 15 years ago, they are waivable under section 212(h)(1)(A)

(b)(6)

*Matter of R-A-M-*

of the Act. Section 212(h)(1)(A) of the Act requires that the Applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated.

The record reflects that the Applicant has been residing in the United States since the age of 15. He currently is employed and is the sole caregiver and provider of financial support of his two U.S. citizen children. The record establishes that the Applicant has been an active member of his community by volunteering to teach at an inner-city outreach program with his church, with the local Little League baseball team, and at his children's school. Finally, in a sworn statement dated [REDACTED] 2010, the Applicant expresses regret over the events that led to his convictions.

The record indicates that the Applicant's admission to the United States is not contrary to the national welfare, safety, or security of the United States and that he has been rehabilitated, as required by section 212(h)(1)(A) of the Act. Through documentary evidence and statements in the record, the Applicant has shown that he is the sole caregiver and source of financial support for his two young children and that he is an active member of his community. The Applicant has no other criminal record except for the events in 2000 resulting in his conviction. Consequently, he has established that he merits a waiver under section 212(h)(1)(A) of the Act.

However, the Applicant also requires a waiver of his inadmissibility under section 212(a)(6)(C)(i) of the Act, for having procured admission to the United States through a material misrepresentation.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record establishes that on [REDACTED] 1997, the Applicant presented his brother's U.S. lawful permanent resident card and Jamaican passport to gain admission to the United States. The Applicant was 15 years old at the time of the misrepresentation.

The Applicant asserts that he lacked the legal capacity to make a willful misrepresentation because he was a minor. However, there is no statutory exception for minors to inadmissibility under section 212(a)(6)(C)(i) of the Act. Where a provision is included in one section of law but not in another, it is presumed that Congress acted intentionally and purposefully. *See In re Jung Tae Suh*, 23 I&N Dec. 626 (BIA 2003) (citing *Matter of Rodriguez-Rodriguez*, 22 I&N Dec. 991 (BIA 1999)). Unlike section 212(a)(6)(C)(i), two other grounds of inadmissibility in section 212(a) contain express exceptions for minors. An exception is provided under section 212(a)(2)(A)(ii)(I) of the Act for individuals who, prior to turning 18, committed a single crime involving moral turpitude more than five years prior to applying for admission. Also, individuals who are under 18 do not accrue unlawful presence pursuant to section 212(a)(9)(B)(iii)(I) of the Act. By comparison, section 212(a)(6)(C)(i) of the Act provides for the inadmissibility of "any alien" who commits fraud or

willful misrepresentation of a material fact in an attempt to gain a benefit. The sub-clause does not include an age-based exception, and we cannot assume such an exception was intended. For this reason, the fact that the Applicant was only 15 when he made the material misrepresentations is not, by itself, enough to establish that he is not inadmissible.

Section 212(a)(6)(C)(i) of the Act may be violated by committing fraud or willfully misrepresenting a material fact. See *Mwongera v. INS*, 187 F.3d 323, 330 (3d Cir. 1999); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). Fraud consists of “false representations of a material fact made with knowledge of its falsity and with intent to deceive.” See *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). In the immigration context, a finding of fraud requires that an individual “know the falsity of his or her statement, intend to deceive the Government official, and succeed in this deception.” *In re Tijam*, 22 I&N Dec. 408, 424-25 (BIA 1998). Willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. See *Parlak v. Holder*, 57 F.3d 457 (6th Cir. 2009) (citing to *Witter v. INS*, 113 F.3d 549, 554 (5th Cir. 1997); see also *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995); *In re Tijam*, *supra*. “The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary.” See *Mwongera*, *supra*.

However, when making a determination as to whether section 212(a)(6)(C)(i) of the Act has been violated, the Applicant’s age at the time he made the misrepresentation is not completely irrelevant. As the Supreme Court has noted, “A child’s age is far ‘more than a chronological fact.’ . . . It is a fact that ‘generates commonsense conclusions about behavior and perception.’” *J.D.B. v. N. Carolina*, 131 S. Ct. 2394, 2403 (2011) (internal citations omitted). When assessing a claim that an applicant lacked capacity to incur inadmissibility due to his or her minor age at the time of the misrepresentation, the adjudicator must weigh the totality of the circumstances presented in the evidence of record and determine whether the applicant possessed the maturity and judgment to comprehend both the falsity, and the potential consequences of, a false statement. Based on this understanding, we find that an evaluation of whether an applicant who made a material misrepresentation while under the age of 18 possessed, at the time, the capacity to make a willful misrepresentation of a material fact must be the result of an individualized inquiry into that particular applicant’s maturity level and ability to understand the nature and consequences of his false statement. The Applicant bears the burden of demonstrating that he is not inadmissible under section 212(a)(6)(C)(i) of the Act. Section 291 of the Act, 8 U.S.C. § 1361. Therefore, he has the burden to prove that, when he made the material misrepresentations, he lacked capacity to willfully misrepresent a material fact.

In *Singh v. Gonzales*, the Sixth Circuit Court of Appeals found that the immigration fraud committed by the parents of a five-year-old child could not be imputed to her because fraudulent conduct “necessarily includes both knowledge of falsity and an intent to deceive” and requires proof of such. 451 F.3d 400, 407 (6th Cir. 2006). The Sixth Circuit found that imputing fraud to a five-year-old child was “even further beyond the pale” than imputing a parent’s negligence to that child. *Id.* at 407. However, in *Malik v. Mukasey*, the Seventh Circuit Court of Appeals found that two 17 year-old brothers whose father had misrepresented their identities, nationality, and religious affiliation when he listed them as derivatives on his asylum application, could be held accountable for that

*Matter of R-A-M-*

fraud. 546 F.3d 890, 892-893 (7th Cir. 2008). While the brothers contended that the immigration judge had erred by imputing their father's fraud to them, the court concluded that the brothers, "given their ages at the time" as well as the fact that they had actively participated in perpetuating the false information, were accountable for the misrepresentations. The court also noted that the Board had previously acknowledged that while the brothers were young at the time their father filed for asylum, "they were old enough to know better and to be held accountable for their actions." 546 F.3d 890, 892 (7th Cir. 2008).

The age of the Applicant in the present case falls much closer to that of the 17 year-old brothers in *Malik* than to that of the five-year-old child in *Singh*. At 15 years of age, the Applicant would have been considerably more cognizant of his misrepresentation than a five year-old child whose parents had misrepresented her immigration status on her behalf.

The fact that the immigration documentation the Applicant used was his brother's indicates that he deliberately decided to impersonate him to gain entry into the United States. The record does not establish that the Applicant's misrepresentations could be attributed to someone else.

The Applicant's assertion that *Matter of Kai Hung Hui*, 15 I&N Dec. 288, 290 (1975) supports his position that he lacked the capacity to form an intention to misrepresent material facts at age 15 is unfounded. In *Matter of Kai Hung Hui*, an individual who obtained fraudulent documents at the age of 18 and then presented the fraudulent documents to obtain entry into the United States was found excludable. Thus the Applicant's misrepresentation was willful, deliberate, and voluntary. Accordingly, the Applicant is subject to section 212(a)(6)(C)(i) of the Act, despite the fact that he was a minor at the time of his entry.

Section 212(i) of the Act provides:

The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

Sec. 204(a)(1)(A) of the Act provides:

(iii) (I) An alien who is described in subclause (II) may file a petition with [Secretary] under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the [Secretary] that--

*Matter of R-A-M-*

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien--

(aa)(AA) who is the spouse of a citizen of the United States;

The Applicant filed his I-360 petition as the abused spouse of a U.S. citizen under section 204(a)(1)(A)(iii) of the Act. Section 212(i) authorizes the Secretary to waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien granted classification under clause (iii) of section 204(a)(1)(A) if the alien demonstrates extreme hardship to the alien or the alien's U.S. citizen, lawful permanent resident, or qualified parent or child.

Accordingly, as the beneficiary of an approved Form I-360, the Applicant must demonstrate extreme hardship to himself or to his U.S. citizen children. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *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 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 U.S. 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

(b)(6)

*Matter of R-A-M-*

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 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 record of hardship includes: a statement from the Applicant, a psychological evaluation with two letters from the evaluating counselor updating the Applicant’s condition, financial documents, letters from community organizations with whom the Applicant volunteers, a letter from the Applicant’s friend, a letter from the Applicant’s estranged wife, court documentation regarding the custody of the Applicant’s children, a police report from an incident involving the Applicant’s wife, and photographs of the family.

The record establishes that the Applicant’s children will suffer extreme hardship as a result of separation. The record shows that the Applicant has been his children’s sole caregiver since they were ages [redacted] and [redacted]. The children are now [redacted] and [redacted] years old. The record indicates that the Applicant is their only source of emotional and financial support and that he participates in their academic and extracurricular activities. The record also indicates that the children’s mother is not capable of caring for them and was abusive and negligent toward her children before she and the Applicant separated. Moreover, the record does not indicate that another close family member is capable of caring for the children in the Applicant’s absence. We also recognize that, given the nature of his inadmissibility, the children face permanent separation from the Applicant if they are

*Matter of R-A-M-*

unable to relocate with him. Thus, the record supports a finding that the children would suffer extreme hardship as a result of being separated from the Applicant.

Furthermore, the children would also suffer extreme hardship as a result of relocating to Jamaica. The Applicant's U.S. citizen children were born in the United States and have lived their entire lives in the United States. The Applicant, now age 33, has lived most of his life in the United States, having left Jamaica at the age of 15. The U.S. State Department Country Information for Jamaica indicates that Jamaica is a developing country, with shootings and violence occurring regularly in certain areas of the country and a police force that is understaffed and ineffective. The report also states that medical care is limited in the country. In addition, we recognize the hardship relocating to a foreign country would have on two children who suffered parental abuse and neglect in the past.

Family separation has been found to be a common result of inadmissibility or removal in some cases. See *Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. Decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. See, e.g., *Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Considering the evidence in the aggregate, we find that the Applicant has established that his U.S. citizen children would face extreme hardship if his waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

*Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board. In *Matter of Mendez-Morales*, the Board, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin*, *supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin*, *supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. See, e.g., *Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under

*Matter of R-A-M-*

section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Morales* at 300.

In *Matter of Mendez-Morales*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the Board stated that:

The factors adverse to the applicant 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 an 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 the alien began his 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 and service to 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.

The Board further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship the Applicant's children will suffer as a result of the Applicant's inadmissibility, the passage of more than 15 years since the Applicant's criminal activity, the financial and emotional support the Applicant provides to his children; the Applicant's attributes as an involved community member, the remorse and regret the Applicant expresses for his actions, and the fact that the Applicant was a minor at the time of his material misrepresentation and a young adult at the time of his arrest. The adverse factors in this matter are the Applicant's willful misrepresentation to officials of the U.S. Government in seeking to obtain admission to the United States, the Applicant's criminal convictions, and his unlawful residence in the United States. In the Applicant's case, the favorable factors outweigh the adverse factors; accordingly, a favorable exercise of the Secretary's discretion is warranted in this matter.

*Matter of R-A-M-*

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 R-A-M-*, ID# 11554 (AAO Sept. 17, 2015)