



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

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

MATTER OF J-C-B-

DATE: APR. 18, 2016

APPEAL OF PHILADELPHIA, PENNSYLVANIA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Antigua and Barbuda, seeks a waiver of the ground of inadmissibility for a crime involving moral turpitude. *See* Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives or because the activities for which the foreign national is inadmissible occurred 15 years prior, if the foreign national's admission would not be contrary to the national welfare, safety, or security of the United States and the foreign national has been rehabilitated.

The Field Office Director, Philadelphia, Pennsylvania, denied the application. The Director concluded that the Applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having convictions involving moral turpitude. The Director then determined that the Applicant had not established extreme hardship to a qualifying relative or provided sufficient evidence to demonstrate rehabilitation.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in not finding that he is eligible for a waiver under section 212(h)(1)(A) of the Act. The Applicant further asserts that the Director erred in not finding extreme hardship to his spouse.

Upon *de novo* review, we will sustain the appeal.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for crimes involving moral turpitude, specifically Conspiracy to Transport Stolen Vehicles in Interstate Commerce and Sale of Stolen Motor Vehicles. Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), provides, in pertinent parts:

(i) In General

Except as provided in clause (ii), any 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, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Individuals found inadmissible under section 212(a)(2)(A) of the Act may seek a waiver of inadmissibility under section 212(h). Section 212(h) of the Act provides, in pertinent parts:

The [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary of Homeland Security] 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; 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 [Secretary of Homeland Security] 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;

(C) the alien is a VAWA self-petitioner; and

(2) The [Secretary of Homeland Security], in his discretion, pursuant to such terms, conditions and procedures as he may be regulations

prescribe, has consented to the alien's applying and reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No 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 or proceedings to remove the alien from the United States. . . .

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).

Decades of case law have contributed to the meaning of extreme hardship. 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." *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was "no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects"). 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); but see *Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). 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). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

II. ANALYSIS

The issue presented on appeal is whether the Applicant established eligibility for a waiver under section 212(h)(1)(A) or section 212(h)(1)(B) of the Act. The Applicant does not contest the finding

(b)(6)

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of inadmissibility for crimes involving moral turpitude under section 212(a)(2)(A) of the Act, a determination supported by the record.¹

With the appeal the Applicant submits a copy of his indictment for criminal activities from [REDACTED] 1995 to 1997, and he resubmits copies of statements from himself and his spouse. The record also contains financial documentation, civil documents, and letters of support.

The evidence in the record, considered cumulatively, establishes that the Applicant's admission would not be contrary to the national welfare, safety, or security of the United States and that he has been rehabilitated.

A. Waiver

The last acts rendering the Applicant inadmissible under section 212(a)(2)(A) of the Act occurred in [REDACTED] 1997, more than 15 years ago. Consequently, the Applicant may demonstrate eligibility for a waiver of inadmissibility pursuant to either section 212(h)(1)(A) or section 212(h)(1)(B) of the Act. To meet the requirements of section 212(h)(1)(A) of the Act, the Applicant must show that 1) admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and 2) the Applicant has been rehabilitated. The Applicant expresses remorse for his crimes and states that for the past five years has had a clean record. His spouse affirms that he is sorry for his crimes and asserts that he has been exemplary for the past several years. She further states that the Applicant built a deck for their house and that he helps neighbors with house repairs. The record also contains numerous letters of support from the Applicant's friends and relatives. The record shows that since his conviction in 2002 for a crime involving moral turpitude, the Applicant violated his probation in 2003 and 2005 and had two driving under the influence convictions in 2003 and 2008. The record also shows that in 2009, he was arrested for Aggravated Assault, Simple Assault, Possession of an Instrument of a Crime, and Recklessly Endangering Another Person based on a fight with his brother-in-law but was not convicted of any crime. Based on the evidence in the record, we find that the Applicant has established 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. Accordingly, the Applicant has shown that he meets the requirement of section 212(h)(1)(A)(iii) of the Act.

¹ The record establishes that on [REDACTED] 2000, the Applicant was convicted of Conspiracy to Transport Stolen Vehicles in Interstate Commerce under 18 U.S.C. § 371, a Class D felony, and Sale of Stolen Motor Vehicles under 18 U.S.C. § 2313, a Class C felony. On [REDACTED] 2002, the court sentenced the Applicant to serve concurrently five months in prison and two years of supervised release. On [REDACTED] 1998, the Applicant was arrested for Possession of Marijuana under New Jersey Statutes 2C:35-10A(4) but on [REDACTED] 1998, he was conditionally discharged under a diversion program.

C. Discretion

We now consider 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-Morales*, 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).

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 adverse factors in the present case are the Applicant’s criminal convictions, as detailed above; his probation violations and arrest in 2009; his placement in removal proceedings; and his unauthorized status and employment in the United States. The favorable factors include the length of marriage between the Applicant and his spouse, his children and stepchildren in the United States, his residence in the United States for over 20 years, the numerous letters of support for the Applicant, the Applicant’s remorse for his criminal actions, and the passage of 15 years since the activities rendering the Applicant inadmissible. In this case, when the favorable factors are considered together, they outweigh the adverse factors such that a favorable exercise of discretion is warranted.

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III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has met that burden. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of J-C-B-*, ID# 17042 (AAO Apr. 18, 2016)