



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

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

MATTER OF M-L-B-

DATE: APR. 28, 2016

APPEAL OF NEWARK, NEW JERSEY FIELD OFFICE DECISION

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

The Applicant, a native and citizen of the Philippines, 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.

The Field Office Director, Newark, New Jersey, denied the application. The Director concluded that the Applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act for a crime involving moral turpitude. The Director then determined that the Applicant had not established extreme hardship to a qualifying relative.

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 his father's hardship would be extreme.

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 a crime involving moral turpitude, specifically for his utter forgery, and tampering with public records or information convictions. 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, an 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. . . .

Section 204(l) of the Act states as follows:

l) Surviving Relative Consideration for Certain Petitions and Applications-

(1) IN GENERAL- An alien described in paragraph (2) who resided in the United States at the time of the death of the qualifying relative and who continues to reside in the United States shall have such petition described in paragraph (2), or an application for adjustment of status to that of a person admitted for lawful permanent residence based upon the family relationship described in paragraph (2), and any related applications, adjudicated notwithstanding the death of the qualifying relative, unless the Secretary of Homeland Security determines, in the unreviewable discretion of the Secretary, that approval would not be in the public interest.

(2) ALIEN DESCRIBED- An alien described in this paragraph is an alien who, immediately prior to the death of his or her qualifying relative, was-- (A) the beneficiary of a pending or approved petition for classification as an immediate relative (as described in section 201(b)(2)(A)(i));

(B) the beneficiary of a pending or approved petition for classification under section 203 (a) or (d);

(C) a derivative beneficiary of a pending or approved petition for classification under section 203(b) (as described in section 203(d));

(D) the beneficiary of a pending or approved refugee/asylee relative petition under section 207 or 208;

(E) an alien admitted in 'T' nonimmigrant status as described in section 101(a)(15)(T)(ii) or in 'U' nonimmigrant status as described in section 01(a)(15)(U)(ii); or

(b)(6)

Matter of M-L-B-

(F) an asylee (as described in section 208(b)(3)).

II. ANALYSIS

The only issue presented on appeal is whether the Applicant has established extreme hardship to a qualifying relative. The Applicant does not contest the finding of inadmissibility for a conviction for a crime involving moral turpitude, a determination supported by the record.¹ The Applicant claims that his father is a qualifying relative, and if the Applicant were to depart or be removed from the United States, his father would experience extreme hardship. The Applicant submitted evidence of the claimed hardship to his father. A review of the record establishes that the Applicant's mother, a U.S. citizen now deceased, is also a qualifying relative, and that the Applicant is eligible for a waiver based on extreme hardship to her. The record further establishes that the Applicant merits a favorable exercise of discretion.

A. Waiver

The record reflects that the Applicant's mother was a U.S. citizen and therefore a qualifying relative for the purposes of his Form I-601. The Applicant submitted a New Jersey Department of Health and Senior Service Certificate of Death which reflects that his mother died on [REDACTED] 2011. With respect to the Applicant's mother's death and its impact on the Applicant's Form I-601, section 204(l) of the Act specifies two conditions that an applicant must satisfy to be eligible for a waiver when the qualifying relative dies. First, the applicant must be residing in the United States at the time of the qualifying relative's death and continue to reside in the United States after the death. Second, the applicant must have been, immediately prior to the qualifying relative's death, the beneficiary of a petition or application described under section 204(l). The Applicant qualifies for relief under section 204(l) because the record establishes that he resided in the United States at the time of his mother's death and continues to reside in the United States at this time, and is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his U.S. citizen mother. Pursuant to the Policy Memorandum issued on December 16, 2010, *Approval of Petitions and Applications after the Death of the Qualifying Relative under New Section 204(l) of the Immigration and Nationality Act*, the fact that the qualifying relative has died will be "deemed to be the functional equivalent of a finding of extreme hardship...." *See Approval of Petitions and Applications after the Death of the Qualifying Relative under New Section 204(l) of the Immigration and Nationality Act*, dated December 16, 2010. Accordingly, the Applicant has established extreme hardship to his now-deceased mother, a qualifying relative.

¹ As stated above, the Applicant is inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude. On [REDACTED] 2005, the court convicted the Applicant under New Jersey Revised Statutes (N.J. Rev. Stat.) § 2C:21.1a(3) of third-degree utter forgery and under N.J. Rev. Stat. § 2C:28-7a of third-degree tampering with public records or information. For each crime, the court sentenced the Applicant to 2 years of probation conditioned on 31 days of time served, and 150 hours of community service, and ordered that the sentences run concurrently.

B. 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 favorable factors in this matter are the Applicant’s ties to his U.S. citizen father and siblings who are U.S. citizens and lawful permanent residents, his long residence in the United States, his community ties, his gainful employment, and the passage of 10 years since his criminal convictions. The unfavorable factors in this matter are the Applicant’s criminal convictions for third-degree utter forgery and third-degree tampering with public records or information; his unauthorized stay and employment in the United States; and his entry into the United States by fraud or willful misrepresentation, discussed in detail below. We find that the record establishes that the positive factors in this case outweigh the negative factors, and a favorable exercise of discretion is warranted.

III. ADDITIONAL INADMISSIBILITY

While not addressed by the Director, the record also shows that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation.

Matter of M-L-B-

Section 212(a)(6)(C)(i) of the Act states:

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.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides, in pertinent part:

(1) The [Secretary of Homeland Security] may, in the discretion of the [Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 of Homeland Security] 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.

In his Form I-601, the Applicant states that he presented identity documents that belonged to another person to procure admission into the United States. Accordingly, the Applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for procuring admission into the United States by fraud or willful misrepresentation. Inadmissibility under this ground is waivable under section 212(i) by showing extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent. As we stated above, the Applicant has shown extreme hardship to his U.S. citizen mother.

IV. 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 M-L-B-*, ID# 16136 (AAO Apr. 28, 2016)