



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

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

MATTER OF C-A-T-M-

DATE: FEB. 10, 2016

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, New Jersey, denied the application. The matter is now before us on appeal. The appeal will be sustained.

In a decision dated June 16, 2015, the Director determined that the Applicant was inadmissible for committing a crime involving moral turpitude. The Director further determined that the Applicant had not established that refusal of admission would result in extreme hardship to a qualifying relative. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

On appeal, the Applicant submits a brief and criminal documents, medical and mental health records, financial documents, a child support order regarding his biological child, an unpublished immigration decision, and letters in support from the Applicant and his spouse, mother, father, sister, brother, and his biological child's mother. The entire record was reviewed and considered in rendering this decision.

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 relevant part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if -

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(1) (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 [Secretary] 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 and

(2) the Attorney General [Secretary], 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 establishes that on [REDACTED] 2003, the Applicant pleaded guilty to and was convicted, under New Jersey Revised Statutes (N.J. Rev. Stat.) § 2C:28-3B3, of Mislead Public Official Reliance/Writing. The Applicant was sentenced to pay a fine. On [REDACTED] 2004, the Applicant pleaded guilty to and was convicted, under N.J. Rev. Stat. § 2C:24-4a, of Endangering Welfare of Child in the Third Degree. The Applicant was sentenced to a three-year probationary term. On [REDACTED] 2007, the Applicant pleaded guilty to and was convicted, under N.J. Rev. Stat. § 2C:33-1a, of Riot in the Fourth Degree. The Applicant was sentenced to a two-year probationary term. On appeal the Applicant does not contest the finding that he is inadmissible for committing a crime involving moral turpitude. The Applicant requires a waiver under section 212(h) of the Act.

A waiver of inadmissibility under section 212(h) is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant. The Applicant's spouse, children, and parents are the only qualifying relatives in this case. Hardship to the Applicant can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

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. . . [,] and while an analysis of a given application includes a review of all claims put forth in light of the facts and circumstances of a case, such analysis does not extend to discovery of undisclosed negative impacts." *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). 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); *see also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme

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hardship). 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).

The Applicant declares that his U.S. citizen child, born in [REDACTED] will experience extreme hardship if she remains in the United States while the Applicant relocates abroad as a result of his inadmissibility. The Applicant maintains that he has a close relationship with his child and wants to continue to be part of her life. He asserts that he speaks with his daughter often and spends time with her on weekends, and if he relocates abroad, long-term separation from him will devastate her. The U.S. citizen child’s mother declares that the Applicant has been a devoted father, spending time with his child and supporting her emotionally and academically. She states that the Applicant’s child has excellent grades due to the Applicant’s help and encouragement. She declares that the Applicant’s child has a strong bond with the Applicant and looks forward to spending her weekends with him and her paternal grandparents. She asserts that the Applicant’s child has anxiety about the Applicant’s relocation to Ecuador and that she will be devastated emotionally if separated long-term from the Applicant. She further declares that she is worried that the Applicant will be unstable emotionally in Ecuador, which will affect his ability to obtain gainful employment that will enable him to financially support his child.

In support of the hardships referenced, the Applicant has provided a child custody support order establishing that in 2014 the Applicant was to contribute \$1,375 a month toward his child’s living expenses and health insurance, and the income of his child’s mother was \$1,520. The Applicant has also provided his child’s school records demonstrating her scholastic achievements. In addition, the Applicant has provided medical records and a history and biopsychosocial assessment which establish that he suffers from schizophrenia and continues to receive professional mental health care and takes medication for his condition. Were the Applicant’s child to remain in the United States while her father relocated abroad, she would be concerned about her father’s well-being and his ability to financially provide for her as required by the support order. In addition, the history and biopsychosocial assessment states that the Applicant spends time going out with his child and is involved in her life. When the evidence is considered in the aggregate, the record does establish that the Applicant’s child will experience extreme hardship were she to remain in the United States while the Applicant relocates to Ecuador.

Regarding relocation abroad with the Applicant as a result of his inadmissibility, the Applicant asserts that it will be difficult for him to find gainful employment in Ecuador because his life has been in the United States for over two decades. He maintains that Ecuador will not be a good place to raise his child, and she will not have a good education. The Applicant has submitted a U.S. Department of State Crime and Safety Report on Ecuador, which states that crime, including violent crime, is a severe problem in Ecuador. The Applicant further provided a U.S. Department of State Human Rights Report on Ecuador which indicates that human rights abuses in Ecuador are problematic. The Applicant also provided documentation on unemployment in Ecuador.

The record establishes that the Applicant’s child was born and raised in the United States. The record evidences that she has no ties to Ecuador. Long-term separation from her mother, her

community, her school, and her extended family, including her paternal grandparents, will cause her considerable hardship. In addition, as a result of her father's mental health diagnosis and the need for continued care and treatment, the Applicant's child would be concerned for her own financial and emotional well-being in Ecuador. When the evidence is considered together, the record establishes that the Applicant's child will experience extreme hardship if she were to relocate to Ecuador with the Applicant.¹

The Applicant has established that the bar to admission would result in extreme hardship to his qualifying relative U.S. citizen child. 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 favorable factors in this matter are the hardship the Applicant's U.S. citizen child, spouse, parents, and siblings would face if the waiver application were denied; the Applicant's long-term residence in the United States, since 1990, when he was five years old; his gainful employment; the obtainment of a high school diploma; support letters; and his expressions of remorse. The unfavorable factors are Applicant's criminal convictions as detailed above, the Applicant's placement in removal proceedings, and the Applicant's periods of unlawful presence and

¹ As extreme hardship to the Applicant's U.S. citizen child has been established, it is not necessary for us to determine whether the Applicant has also established extreme hardship to his other qualifying relatives.

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employment in the United States. In this case, when the favorable factors are considered together, they outweigh the adverse factors such that a favorable exercise of discretion is warranted.

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 C-A-T-M-*, ID# 15578 (AAO Feb. 10, 2016)