



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

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

MATTER OF J-A-S-D-L-O-

DATE: JAN. 14, 2016

APPEAL OF WASHINGTON FIELD OFFICE DECISION

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

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

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance. The Applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse and children.

In a decision dated February 23, 2015, the Director determined that the Applicant had not established extreme hardship to a qualifying relative. The Director further found that the positive factors in the Applicant's case did not outweigh the negative factors. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

On appeal the Applicant contends that the Director erred in finding that his spouse and children would not suffer extreme hardship in the event that he is removed. The Applicant further asserts that he does merit favorable discretion. In support, the Applicant submits a statement from his spouse, letters from his children, school records for the children, medical documentation for his spouse's father, financial documentation, information about [REDACTED] marijuana laws, and copies of documents previously submitted. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), 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, or

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(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.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) 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) (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.

The record reflects that on [REDACTED] 2013, in the General District Court of [REDACTED] Virginia, the Applicant was convicted of Possession of Marijuana in violation of state statute 18.2-250.1. The Applicant was fined \$150 and had his driver's license suspended for six months. The Applicant does not contest that he is inadmissible under section 212(a)(2)(A)(i)(II), for a controlled substance violation. The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. In this case, the qualifying relatives are the Applicant's U.S. citizen spouse and children. 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).

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), but hardship "need not be unique to be extreme." *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996). 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 hardship); *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).

On appeal the Applicant contends that his spouse and children will experience extreme hardship were they to remain in the United States while he relocates abroad as a result of his inadmissibility. The Applicant states that without him his spouse will be a single parent of three young children, including one with a learning disability, and that such an arrangement will cause her hardship. The Applicant further references that his father-in-law suffered a stroke and is dependent on his spouse’s care. In her own declaration, the Applicant’s spouse asserts that she would be devastated without the Applicant as her companion and confidant, and she maintains that the children adore him and have never been separated from him. The spouse also contends that without the Applicant she must provide care for her three children alone, and that would cause her hardship. She states that the father of her oldest child has no relationship with the child and offered no support, but that the Applicant has raised him as his own. The spouse further maintains that her parents are elderly with medical problems and rely on her assistance to take them to medical appointments and to do daily chores, but that she cannot imagine doing everything without the Applicant’s support.

In support, letters from the Applicant’s children have been submitted indicating that they have a close relationship with him and that he supports them. Medical documentation has also been submitted establishing that the Applicant’s father-in-law had a stroke in April 2015 and is at an elderly care facility. School records submitted to the record include certificates of achievement and an evaluation identifying the Applicant’s youngest child with a learning disability. Financial documents indicate that the Applicant assists in the finances of the household based on his gainful employment. Having reviewed the preceding evidence, we find that in the aggregate it establishes that the Applicant’s spouse and children would experience extreme hardship as a result of separation from the Applicant.

We also find the record to establish that the Applicant’s spouse and children would experience extreme hardship if they were to relocate to El Salvador to reside with the Applicant. In her affidavit the Applicant’s spouse states that she and her children have never been to El Salvador and that she cannot imagine finding work there or getting used to the customs. She notes that she was born in Mexico and has no ties to El Salvador. She further maintains that as news accounts indicate that El Salvador is violent and dangerous, she fears it would jeopardize the safety of her children. In support the Applicant submitted to the record country information that indicates high crimes rates and poverty in El Salvador. According to the U.S. Department of States, crime and violence are serious problems throughout the country, and it warns U.S. citizens that crime and violence levels in El Salvador remain high and that those traveling to El Salvador should remain alert to their surroundings.

The record establishes that the Applicant’s spouse was born in Mexico and has no ties to El Salvador. She has resided in the United States for over a decade, and the Applicant’s children were born in the United States. To relocate to El Salvador the Applicant’s spouse would have to leave her family, most notably her elderly parents, and she would be concerned about her and the children’s

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safety as well as financial well-being in El Salvador. The record further establishes that the Applicant's children, born in [REDACTED] are natives of the United States and are integrated into the United States lifestyle and educational system. To uproot them at this stage of their education and social development to relocate to El Salvador would constitute extreme hardship to them. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001) The Applicant has thus established that the Applicant's spouse and children would suffer extreme hardship were they to relocate abroad to reside with the Applicant due to his inadmissibility.

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 case are the extreme hardship the Applicant's spouse and children would face, regardless of whether they accompany the Applicant or stay in the United States; the Applicant's employment and payment of taxes; letters of support from his family, friends, and employers; his long-term community ties in the United States; and his marriage since 2002. The negative factors in this case are the Applicant's conviction for possession of marijuana in 2013 and periods of unlawful presence and employment in the United States. In this case, when the favorable

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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 J-A-S-D-L-O-*, ID# 14672 (AAO Jan. 14, 2016)