



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

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

MATTER OF S-S-S-

DATE: JULY 7, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Egypt, 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 USCIS Director, Newark, New Jersey Field Office denied the application. The Director concluded that the Applicant had not established that refusal of admission to the United States would result in extreme hardship to a qualifying relative. We dismissed the Applicant's appeal, finding that although the Applicant had established extreme hardship to his U.S. citizen spouse and stepdaughter, he did not warrant a favorable exercise of discretion.

The matter is now before us on a motion to reopen and reconsider.¹ On motion, the Applicant asserts he feels remorse for his criminal conduct and that he has been meeting the terms of his probation. The Applicant submits additional evidence, including proof he has paid restitution in full and that his stepdaughter has serious medical conditions, including AIDS and Kaposi's sarcoma.

We will grant the motion to reopen.

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 conspiracy to commit wire fraud. Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), provides that any foreign national

¹ A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Because we grant the motion to reopen, the motion to reconsider is moot.

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convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude is inadmissible.

Individuals found inadmissible under section 212(a)(2)(A) of the Act may seek a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). Section 212(h) of the Act provides for a discretionary waiver if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter.

II. ANALYSIS

The Applicant concedes that he is inadmissible under section 212(a)(2)(A) of the Act for his conviction for a crime involving moral turpitude, a finding supported by the record.² We previously determined that the Applicant established that his U.S. citizen spouse would suffer extreme hardship if his application was denied. The issue in this motion is whether the evidence establishes that the Applicant warrants a favorable exercise of discretion. On motion, the Applicant expresses remorse for his conduct that resulted in his conviction for conspiracy to commit wire fraud. He states that he has been faithfully reporting to his probation officer. The Applicant submits evidence that he has paid restitution in full. The Applicant submits his stepdaughter's medical records showing that she has AIDS and Kaposi sarcoma, causing her constant severe pain and making her unable to walk. He also submits letters from numerous charitable organizations and prominent community leaders thanking him for his contributions. The evidence in the record demonstrates that the Applicant warrants a favorable exercise of discretion.

A. Discretion

The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident with the social and humane considerations presented 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). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the foreign national and his or her family, service in the U.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 good character. *Id.*

² On [REDACTED] 2011, the Applicant was convicted under 18 U.S.C. § 1349, for conspiracy to commit wire fraud, in the U.S. District Court [REDACTED] of New York. The Applicant was sentenced to probation for five years and was ordered to pay restitution.

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The favorable factors in this matter are the extreme hardship the Applicant's U.S. citizen spouse and stepdaughter would face if the waiver application were denied; the Applicant's long-term residence in the United States; his business ties; the Applicant's good character, as described in letters of support from a police detective, his city council president, and priest; his community involvement with [REDACTED] and the Salvation Army; his payment of restitution in full; his abiding by the terms of his probation; and his assistance to the U.S. government to gather evidence of a mortgage fraud scheme that resulted in the arrest and conviction of the perpetrators. In addition, the record indicates that he has consistently paid his taxes. Moreover, seven years have lapsed since the Applicant pleaded guilty to his offense. The unfavorable factors are the Applicant's criminal history and periods of unlawful employment and presence in the United States.

The Applicant has established that the favorable factors outweigh the unfavorable factors and that he warrants a favorable exercise of discretion.

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. He has provided sufficient evidence of favorable factors to establish that he merits a positive exercise of discretion.

ORDER: The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of S-S-S-*, ID# 16973 (AAO July 7, 2016)