



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

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

MATTER OF T-S-C-

DATE: JULY 19, 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 Republic of China (Taiwan), 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 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, Newark, New Jersey, denied the application. The Director concluded that the Applicant was inadmissible for having been convicted of a crime involving moral turpitude. The Director further noted that the Applicant committed the crime more than 15 years ago and had established the requirements under section 212(h)(1)(A) of the Act, 8 U.S.C. § 1182(h)(1)(A), for a waiver of inadmissibility. Nevertheless, the Director determined that the Applicant had committed a violent or dangerous crime, and as he had not demonstrated exceptional and extremely unusual hardship to his family if the waiver were to be denied, he did not merit a favorable exercise of discretion.

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 spouse would suffer exceptional and extremely unusual hardship if the waiver is denied.

Upon *de novo* review, we will sustain the appeal. The Applicant has demonstrated exceptional and extremely unusual hardship to his spouse and a favorable exercise of discretion is warranted.

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, in 1998, the Applicant was convicted of Possession of a Weapon for Unlawful Purpose. Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), provides that any foreign national convicted of, or who admits having

committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime 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. Section 212(h) of the Act provides for a discretionary waiver where the activities occurred more than 15 years before the date of the application if admission to the United States would not be contrary to the national welfare, safety, or security of the United States and the foreign national has been rehabilitated (Section 212(h)(1)(A)).

## II. ANALYSIS

The Applicant does not contest the finding of inadmissibility for a crime involving moral turpitude or that his conviction was for a violent or dangerous crime, a determination supported by the record.<sup>1</sup> Since the Applicant committed a violent or dangerous crime, he must demonstrate exceptional and extremely unusual hardship to himself or his spouse or children. The Applicant asserts that his spouse would suffer emotional and financial hardship if she were to remain in the United States without him and medical and financial hardship if she accompanies him to Taiwan.

In support of these hardship claims, the Applicant submitted with the Form I-601, statements from himself and his spouse, financial documentation, civil documentation, and his conviction documents. In the appeal, he submits financial documentation, updated affidavits from himself and his spouse, a psychological evaluation of his spouse, his spouse's medical documentation, and documentation related to his conviction.

### A. Discretion

A favorable exercise of discretion is limited for applicants who have been convicted of a violent or dangerous crime. Specifically, 8 C.F.R. § 212.7(d), which codified for purposes of section 212(h)(2) of the Act the discretionary standard first applied to section 209(c) waivers by the Attorney General in *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002), limits the favorable exercise of discretion with respect to those inadmissible under section 212(a)(2) of the Act on account of a violent or dangerous crime, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which denial of the application would result in exceptional and extremely unusual hardship. The regulation provides further that depending on the gravity of the underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

---

<sup>1</sup> The record shows that in 1998, the Applicant pleaded guilty to and was convicted under New Jersey Statute 2C:39-4d of Possession of a Weapon for Unlawful Purpose, for which he was placed on probation for 3 years, and ordered to perform community service, make restitution, and pay fees and fines.

The Applicant has been convicted of a violent or dangerous crime and therefore must show that “extraordinary circumstances” warrant approval of the waiver. 8 C.F.R. § 212.7(d). Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant’s admission would result in exceptional and extremely unusual hardship. *Id.* Finding no evidence of foreign policy, national security, or other extraordinary equities in this case, we will consider whether you have “clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship.” *Id.*

In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the Board of Immigration Appeals (the Board) determined that exceptional and extremely unusual hardship “must be ‘substantially’ beyond the ordinary hardship that would be expected when a close family member leaves this country.” However, the applicant need not show that hardship would be unconscionable. *Id.* at 60-61. The Board stated that in assessing exceptional and extremely unusual hardship, it would be useful to consider the factors considered in determining extreme hardship. *Id.* at 63. Those factors include, but are not limited to, a qualifying relative’s family ties in the United States and in the country to which he or she would relocate; the conditions in the country in the country of relocation; the financial consequences of departing the United States; and significant medical conditions, especially where appropriate health care services would be unavailable in the country of relocation. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999); *see also Matter of Anderson*, 16 I&N Dec. 596, 597-98 (BIA 1978).

In *Monreal-Aguinaga*, the Board provided additional examples of the hardship factors it deemed relevant for meeting the higher standard of exceptional and extremely unusual hardship:

[T]he ages, health, and circumstances of qualifying lawful permanent resident and United States citizen relatives. For example, an applicant who has elderly parents in this country who are solely dependent upon him for support might well have a strong case. Another strong applicant might have a qualifying child with very serious health issues, or compelling special needs in school. A lower standard of living or adverse country conditions in the country of return are factors to consider only insofar as they may affect a qualifying relative, but generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship. As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship.

23 I&N Dec. at 63-64. The Board has also noted that “the relative level of hardship a person might suffer cannot be considered entirely in a vacuum. It must necessarily be assessed, at least in part, by comparing it to the hardship others might face.” *Matter of Andazola-Rivas*, 23 I&N Dec. 319, 323 (BIA 2002). Even where an Immigration Judge has found that a respondent’s children “would suffer hardship of an emotional, academic and financial nature,” and would “face complete upheaval in their lives and hardship that could conceivably ruin their lives,” *id.* at 321, the Board has held that such hardships “are simply not substantially different from those that would normally be expected upon removal to a less developed country.” *Id.* at 324.

However, in *Matter of Gonzalez Recinas*, the Board clarified that “the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief.” 23 I&N Dec. 467, 470 (BIA 2002). The Board found that the hardship factors presented by the respondent—including her “heavy financial and familial burden . . . the lack of support from her children’s father, [her U.S.] citizen children’s unfamiliarity with the Spanish language, the lawful residence in this country of all of [her] immediate family, and the concomitant lack of family in Mexico”—cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. *Id.* at 472. The Board emphasized that the case was “on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met.” *Id.* at 470.

An analysis under *Monreal-Aguinaga* and *Andazola-Rivas* is appropriate in this case. See *Gonzalez Recinas*, 23 I&N Dec. at 469 (“While any hardship case ultimately succeeds or fails on its own merits and on the particular facts presented, *Matter of Andazola* and *Matter of Monreal* are the starting points for any analysis of exceptional and extremely unusual hardship.”).

In their affidavits, the Applicant and his spouse state that she no longer works and depends on him for emotional and financial support. He asserts that it will be difficult for him to find employment in Taiwan as an older worker without connections. The record shows that the Applicant is in his 60s and works as a salesperson; his tax records show that two years ago he had income of \$27,000. He and his spouse maintain that their adult children reside in the United States and have their own lives and would be unable to help them financially. They declare that his spouse has serious medical conditions, and she has had the same gastroenterologist for 8 years and has anxiety about having to rely on medical practitioners in Taiwan who are unfamiliar with her health conditions. They further declare that they will struggle to pay for her health care, as Obamacare currently supplements her health care costs.

The Applicant submitted evidence of his spouse’s health insurance. He also provided letters from her medical practitioners. Her primary physician stated that she has hypertension and type II diabetes and requires medication, and she is at risk of developing cardiovascular and kidney disease and needs to be tested every 3 months. His spouse’s gastroenterologist stated that she has intestinal metaplasia, which increases her likelihood of developing gastric cancer, and recommended frequent surveillance of her stomach. He also stated that the Applicant’s spouse has a family history of colon cancer and had multiple colonoscopies where polyps were found and had the risk of turning into colon cancer, so they were removed, and the Applicant’s spouse needs careful and frequent monitoring to detect the formation of new polyps. His spouse’s dentist stated that she needs oral health monitoring because of a past history of periodontal disease.

In addition, the record shows that the Applicant’s spouse is in her 60s and has lived in the United States for over 20 years and that long-term separation from her community, her family, and the medical professionals familiar with her treatment plan, will cause her significant hardship. When

considering the evidence in the aggregate, it demonstrates that his spouse will suffer exceptional and extremely unusual hardship if she accompanies him abroad.

We now address whether the Applicant merits a waiver of inadmissibility as a matter of discretion. While 8 C.F.R. § 212.7(d) may allow for denial of the waiver as a discretionary matter based solely on the gravity of the applicant's offense, we also engage in a conventional discretionary analysis and "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 this country." *Matter of Mendez-Morales*, 21 I&N Dec. 296, 300 (BIA 1996).

Here, the favorable factors are the exceptional and extremely unusual hardship to the Applicant's spouse if the waiver were denied, his 40-year marriage to his spouse, his two adult children in the United States, his lawful permanent resident status for 23 years, his home ownership, his lengthy employment and payment of taxes, the passage of 19 years since he committed the crime rendering him inadmissible, the early discharge of his probation, his statements of remorse, and the statements of support from his spouse. The unfavorable factors are the nature and seriousness of the Applicant's crime and his placement in removal proceedings. Despite the circumstances of the Applicant's crime, we observe that the crime is punishable by up to five years imprisonment but that the Applicant was sentenced to only probation and was released from probation a year early. In this case, the favorable factors outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

### 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 demonstrated exceptional and extremely unusual hardship to his spouse if the waiver were to be denied and shown that a favorable exercise of discretion is warranted. Accordingly, we sustain the appeal.

**ORDER:** The appeal is sustained.

Cite as *Matter of T-S-C-*, ID# 16422 (AAO July 19, 2016)