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

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

MATTER OF R-A-D-

DATE: MAY 10, 2016

APPEAL OF MIAMI, FLORIDA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Jamaica, seeks a waiver of the ground of inadmissibility for a controlled substance violation. *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 to lawful permanent resident (LPR) status 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, Miami, Florida, denied the application. The Director concluded that the Applicant failed to demonstrate that his qualifying relatives would suffer extreme hardship upon his removal from the United States.

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's and stepchildren's hardship would be extreme.

Upon *de novo* review, we will sustain the appeal.

I. LAW

The Applicant is seeking to adjust to LPR status and has been found inadmissible for a controlled substance violation. Specifically, the Applicant was convicted of Possession of Cannabis (20 grams or less) pursuant to Florida Statute Section 893.13-6B on [REDACTED] 2012. 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, pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying and reapplying for a visa, for admission to the United States, or adjustment of status. . .

Decades of case law have contributed to the meaning of extreme hardship. 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). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was “no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects”). 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); 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). 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).

II. ANALYSIS

The only issue presented on appeal is whether the Applicant’s spouse and stepchildren would experience extreme hardship if the waiver is denied. The Applicant does not contest the finding of inadmissibility for a controlled substance violation, a determination supported by the record. Were he to depart or be removed from the United States, the Applicant does not indicate whether his spouse and stepchildren intend to remain in the United States or relocate with him to Jamaica, but the Applicant’s spouse claims she and the children would experience extreme hardship under either scenario. The claimed hardship to the Applicant’s spouse and stepchildren from separation consists primarily of the emotional, physical and financial hardships of separation. The claimed hardship from relocation consists primarily of separation from family in the United States, the inability to obtain employment or pursue a chosen profession, and a lower standard of living.

The evidence in the record, considered both individually and cumulatively, establishes that the Applicant’s spouse and stepchildren would experience extreme hardship if the Applicant’s waiver application is denied. We further find that the Applicant has established that he merits a waiver as a matter of discretion.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(2)(A) of the Act for a controlled substance violation. Specifically, the record establishes that the Applicant was

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convicted of Possession of Cannabis (20 grams or less) pursuant to Florida Statute Section 893.13-6B on [REDACTED] 2012, and was fined. As such, the Applicant is inadmissible under 212(a)(2)(A)(i)(II) of the Act. As aforementioned, the Applicant has not contested his inadmissibility.

B. Waiver

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 his two U.S. citizen stepchildren. In the appeal, the Applicant submits identification documents for himself, his U.S. citizen spouse and his U.S. citizen stepchildren; a psychological examination of his spouse and stepchildren; the Applicant's and his spouse's sworn statements; family photographs; a support letter; a copy of the Applicant's pilot's private pilot license and information about the steps the Applicant needs to take to obtain a commercial pilot license; a letter from the Applicant's former employer; financial documentation; articles related to the effects of immigration issues on children; country condition materials; and documentation pertaining to the Applicant's criminal conviction. The Applicant claims that his spouse and stepchildren will suffer extreme hardship whether they return with him to Jamaica or they remain in the United States without him.

We find that the Applicant has established that his spouse and stepchildren will suffer extreme hardship as a consequence of being separated from him. Concerning the spouse's emotional and psychological hardships, the record contains a psychological evaluation of the spouse and stepchildren, sworn statements from the Applicant and spouse, and medical records for the spouse. The psychological evaluation reveals that the spouse is suffering from depression and has endured a history of abuse in her childhood and prior relationship with the man who is the father of her children. The psychologist states that the Applicant's spouse met the Applicant when she was pregnant, and they began a relationship and eventually married. This report, as well as the sworn statements from the Applicant and spouse, describe the Applicant as very supportive of the spouse and their children, as he provides child care, tries to contribute financially when possible, and takes care of the household responsibilities. The report indicates that the spouse is at risk of further deterioration, requiring a more intense and restrictive form of treatment for her symptoms of depression, should the spouse be separated from the Applicant. In her statement, the spouse also indicates that she does not want to be a single parent, and that she believes it would be physically impossible for her and that the Applicant is essential to her since he provides childcare for their children as well. She also states that the Applicant is a reliable father figure for her children, and that they emotionally and physically depend on them.

With regard to the spouse's and stepchildren's financial hardships, the spouse indicates that she relies upon the Applicant for childcare and that she could not afford childcare for her daughter if the Applicant did not help her. The record contains documentation establishing that the Applicant has performed odd jobs when he can and contributes financially. The record also evidences that the Applicant has a private pilot license and needs only 15 hours of training to obtain a commercial pilot certificate. The record also contains financial documentation, including tax records, confirming that

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it would be very difficult for the spouse to afford childcare for her daughter given her income. In light of the spouse's emotional and psychological hardships, and the stepchildren's reliance upon the Applicant, as well as their potential financial hardships, the record reflects that the hardship facing the spouse and stepchildren in the United States without the presence of the Applicant cumulatively rises to the level of extreme.

We further conclude that the Applicant has demonstrated that his spouse and stepchildren would suffer extreme hardship in the event that she or their children relocate to Jamaica. The spouse was born in Puerto Rico, and has been living in [REDACTED], Florida for over 16 years. The Applicant's stepchildren are also U.S. citizens and have only lived in the United States. Further, the record indicates that the spouse has never been to Jamaica and has no family there, and her immediate family, including her children, her mother, her sister, and brother all live in the United States. Moreover, the Applicant's attorney notes that, although the Applicant's stepchildren do not have a relationship with their father, and he is not providing them with support, they would be cut off from the possibility that they could obtain child support or have a relationship with their biological father. The spouse also indicates that she has safety concerns regarding relocation to Jamaica and fears that she will be unable to find employment. The record contains country-conditions materials supporting her assertions. When considered in the aggregate, the hardships that would result if the Applicant's wife and stepchildren relocated to Jamaica, including length of residence in the United States, separation from their family members, and potential safety and economic issues in Jamaica, rise to the level of extreme hardship.

Therefore, the record establishes that refusal of admission would result in extreme hardship to the Applicant's spouse and stepchildren either if they remained in the United States or relocated to Jamaica.

C. 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 extreme hardships the Applicant's U.S. citizen spouse and stepchildren would face if the Applicant is not granted this waiver, regardless of whether they accompanied the Applicant or remained in the United States; the Applicant's community ties; the Applicant's periods of employment; the Applicant's obtainment of a private pilot license; and support letters on the Applicant's behalf. The unfavorable factors in this matter are the Applicant's conviction for Possession of Cannabis and periods of unauthorized stay and employment in the United States. Although the Applicant's immigration violations and criminal conviction are serious in nature, the record establishes that the positive factors in this case outweigh the negative factors. We therefore find 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. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of R-A-D-*, ID# 16073 (AAO May 10, 2016)