

(b)(6)



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

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

MATTER OF E-R-C-

DATE: MAY 17, 2016

APPEAL OF ATLANTA, GEORGIA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Costa Rica, 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 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 USCIS Field Office Director, Atlanta, Georgia, denied the application. The Director concluded that the Applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. The Director then determined that the Applicant had not established that a qualifying relative would experience extreme hardship if he was refused admission to 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 having been convicted of a crime involving moral turpitude. Specifically, the record establishes that on [REDACTED] 2005, the Applicant was convicted of Cruelty to Children in the First Degree pursuant to Georgia Code Annotated (Ga. Code Ann.) § 16-5-70.

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, and pursuant to such terms, conditions and procedures as he may be 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 or stepchildren would experience extreme hardship if the waiver is denied. The Applicant does not contest the finding of inadmissibility for having been convicted of a crime involving moral turpitude, a determination supported by the record.<sup>1</sup> The evidence in the record, considered cumulatively, does establish that the Applicant's spouse would experience extreme hardship if the Applicant is refused admission to the United States. The Applicant has also demonstrated that he merits a waiver as a matter of discretion.

---

<sup>1</sup> We note that the Applicant stated in his affidavit submitted with the Form I-601 that he was advised to plead guilty to Cruelty to Children, First Degree, although he maintains that he had not committed any improper act. Collateral attacks upon an applicant's conviction "do not operate to negate the finality of [the] conviction unless and until the conviction is overturned." *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996). We "cannot go behind the judicial record to determine the guilt or innocence of the alien." *Id.* (citing *Matter of Fortis*, 14 I&N Dec. 576, 577 (BIA 1974); see also *Matter of Khalik*, 17 I&N Dec. 518, 519 (BIA 1980)).

*Matter of E-R-C-*

A. 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 spouse and stepchildren. With the Form I-601, the Applicant submitted statements from his spouse and himself, medical documentation for his stepson, a psychological evaluation of his spouse, family photographs, financial documentation, letters of support, and documents related to the Applicant's conviction. The record also contains copies of tax and financial records, school records, marriage and birth certificates, and immigration documents. On appeal, the Applicant submits a brief and references previously-submitted material.

The Applicant and his spouse assert that the Applicant's spouse would experience emotional and financial hardship were she to remain in the United States while the Applicant relocates abroad due to his inadmissibility. The Applicant states that his spouse suffers from depression and anxiety and needs his emotional and financial support. He states that his spouse has two children from a prior relationship, born in [REDACTED] and [REDACTED] who rely on him. The Applicant and his spouse maintain that in 2014 the Applicant's spouse's older son was hospitalized for obsessive compulsive disorder and anxiety and continues to need care. The Applicant's spouse maintains that the Applicant's attention to her younger son allowed her to care for her older son while he was in the hospital. She declares that she and the children need the Applicant more than ever and worries that she would not be able to cope with her son's medical condition without him. The Applicant's stepsons affirm their close relationship with the Applicant in their own letters. They state that their biological father abandoned them and the Applicant has been their father figure.

The Applicant also submitted a psychological evaluation of his spouse from a licensed clinical social worker which states that his spouse is suffering from major depression disorder and separation anxiety and relies on the Applicant financially and emotionally. The licensed clinical social worker further maintains that the Applicant's spouse worries about the possibility of long-term separation from the Applicant and how it will adversely impact her family. The licensed clinical social worker references that the Applicant's stepson requires constant monitoring and treatment, including antidepressant medication on a daily basis and weekly visits to a psychologist, and that long-term separation from the Applicant would devastate his stepchildren and spouse. The evaluation further indicates that the Applicant's spouse requires counseling to cope with stress and recommends that she receive an in-depth examination and mental health treatment. The Applicant also submitted evidence establishing his stepson's hospitalization from April 19, 2014 until May 9, 2014, at an adolescent crisis stabilization unit, for obsessive compulsive disorder, depression, and anxiety, and his current treatment plan, which includes medications and therapy.

As to financial hardship, the Applicant provided a 2013 income tax return which indicates that he is gainfully employed as a manager and his spouse is a homemaker. This evidence establishes that the Applicant is the breadwinner of his family. When the evidence is considered in the aggregate, it demonstrates that the Applicant's spouse would experience extreme emotional and financial hardship if she were to remain in the United States while the Applicant relocates abroad as a result of his inadmissibility.

## B. 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 adverse factors presented in this case are the Applicant’s conviction for first-degree cruelty to children and periods of unlawful presence and employment in the United States.<sup>2</sup> The favorable factors are the extreme hardship to the Applicant’s spouse and stepchildren if the waiver were to be denied; the Applicant’s long-term employment and payment of taxes; letters of support from the Applicant’s employer, friends, landlord, church, and family; the Applicant’s long-term residence in the United States; his 10 years of marriage; his successful completion of his sentencing conditions, including counseling, following his conviction; the early termination of his probation by the court; and the passage of nearly 12 years since the conduct that led to his conviction. In this case, when the

---

<sup>2</sup> The record indicates that the Applicant’s conviction resulted from a conversation about an explicit topic that was found to result in emotional or psychological harm to his former step-daughter, and there is no indication that there was any physical contact or threat of any other harmful conduct.

*Matter of E-R-C-*

favorable factors are considered together, they 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. Accordingly, we sustain the appeal.

**ORDER:** The appeal is sustained.

Cite as *Matter of E-R-C-*, ID# 15925 (AAO May 17, 2016)