



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

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

MATTER OF J-V-

DATE: SEPT. 27, 2016

APPEAL OF SPOKANE, WASHINGTON FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Fiji, seeks a waiver of inadmissibility for a crime involving moral turpitude and for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h), and 212(i), 8 U.S.C. § 1182(i). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to that of a lawful permanent resident (LPR) must be admissible or receive a waiver of inadmissibility. The Applicant is the beneficiary of an approved self-petition, under the Violence Against Women Act (VAWA), as an abused spouse of a U.S. citizen. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver of inadmissibility for fraud or misrepresentation to VAWA self-petitioners if refusal of admission would result in extreme hardship to the self-petitioner or to a qualifying relative or qualifying relatives. USCIS may also grant a discretionary waiver of inadmissibility for a crime involving moral turpitude to VAWA self-petitioners.

The USCIS Field Office Director, Spokane, Washington, denied the application. The Director determined the Applicant inadmissible pursuant to section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), for fraud or misrepresentation. The Director further determined the Applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The Director noted that the Applicant was the beneficiary of an approved VAWA self-petition. However, the Director concluded that the Applicant had not established extreme hardship to himself or a qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and states that the Director erred by determining that he would not suffer extreme hardship if his waiver was not granted.

Upon *de novo* review, we will sustain the appeal because the Applicant has demonstrated extreme hardship to himself upon relocation to Fiji and that a favorable exercise of discretion is warranted.

I. LAW

The Applicant is seeking to adjust status to that of an LPR and has been found inadmissible under section 212(a)(6)(C) of the Act, for fraud or misrepresentation. Section 212(i) of the Act provides that USCIS may grant a discretionary waiver of inadmissibility to self-petitioners under VAWA if refusal of

admission would result in extreme hardship to the self-petitioner or to a qualifying relative or qualifying relatives.

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).

The Applicant has also been found inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of a crime involving moral turpitude. Section 212(a)(2)(A)(i)(I) of the Act 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 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 the alien is a VAWA self-petitioner.

II. ANALYSIS

The issues presented on appeal are whether the Applicant is inadmissible to the United States and if so, whether he should be granted a waiver of inadmissibility in the exercise of discretion.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(2)(A)(i)(I) of the Act. Specifically, the record establishes that the Applicant failed to disclose his previous arrest and conviction when he applied for a nonimmigrant visa in July 2007. On appeal, the Applicant maintains that he did not disclose the arrest or conviction because he believed that the Certificate of Rehabilitation he had received meant that his conviction was no longer on his record.

The Act makes clear that a foreign national seeking admission must establish admissibility “clearly and beyond doubt.” Sections 235(b)(2)(A) and 240(c)(2)(A) of the Act. The same is true for demonstrating admissibility in the context of an application for adjustment of status. *Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008); *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008); *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). In making a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act, the record must contain evidence showing that a reasonable person would find that an applicant used fraud or that he or she willfully misrepresented a material fact in an attempt to obtain a visa, other documentation, admission into the United States, or any other immigration benefit. USCIS Policy Manual, Volume 8 – Admissibility, Part J – Fraud and Willful Misrepresentation, Chapter 3(A)(1).

As noted by the Director, the Form DS-156, Nonimmigrant Visa Application, asks if the foreign national “has ever been arrested or convicted for any offense or crime, even though subject of a pardon, amnesty or other similar legal action.” The Applicant claims that he believed he did not have to disclose the arrest because he had been issued a certificate of rehabilitation, but the visa application specifies that all convictions must be disclosed regardless of subsequent rehabilitative action. The Applicant has not established that he was unaware he was required to disclose his conviction and that his failure to disclose it was not willful. Further, although the Applicant has previously maintained that a travel agent filled the application out on his behalf, because applications are signed “under penalty of perjury,” an applicant attests that his or her claims are truthful by signing and submitting the application or materials submitted with the application. 8 USCIS Policy Manual J.3(D)(1), <https://www.uscis.gov/policymanual>. The record does not establish that the Applicant was unaware of the contents of his application when he signed it, and he states on appeal that he was aware of the contents, including his response to the question about any prior arrests or convictions. The record thus establishes that he Applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for fraud or misrepresentation.

As for the Applicant’s inadmissibility for having been convicted of a crime involving moral turpitude, the Applicant asserts on appeal that his conviction was a “purely political offense.” He maintains that he procured an immigration file for a close friend who was concerned regarding adverse actions that the Department of Immigration was planning to take against him. The phrase “purely political offenses” refers to “offenses that resulted in convictions based on fabricated charges or predicated upon repressive measures against racial, religious, or political minorities.” 22 C.F.R. § 40.21(a)(6); *see also Matter of F-*, 8 I&N Dec. 469, 472 (BIA 1959) (“[A]n alien has not been convicted of an offense involving moral turpitude when the record of conviction shows on its face that the offense was political or that he was charged because of political considerations.”). The Applicant claims that he unlawfully obtained his friend’s immigration record to protect the friend from harm based on his race and nationality, but he does not provide any evidence to support this assertion or to establish that his own prosecution was the result of repressive measures against minorities by the government of Fiji. The Applicant has not established by supporting documentary evidence that his conviction was a “purely political offense.”

B. Extreme Hardship

Pursuant to section 212(i) of the Act, the Applicant, as a VAWA self-petitioner, must demonstrate that refusal of admission would result in extreme hardship to himself or to a qualifying relative. The Applicant maintains that were he to relocate abroad, he would experience emotional, psychological, and financial hardship. The Applicant explains that he has been living in the United States since 2007 and long-term separation from his numerous family members here would cause him hardship. He further explains that he has experienced severe depression in the past, particularly when he was having marital problems in about 2011, and he needs continuing support and treatment for his mental health conditions. Were he to relocate abroad, he contends that his depression would worsen and he would not be able to obtain adequate mental health treatment in Fiji. The Applicant also states that as a result of a pre-cancerous polyp and injuries resulting from a car accident, he needs to continue receiving medical care by the professionals familiar with his diagnosis and treatment plan. The Applicant also states that he is gainfully employed in the United States but were he to return to Fiji, he would not be able to find employment as a result of the Fiji government's mandatory retirement age and the substandard economy.

In support, the Applicant has submitted documentation establishing his long-term treatment for severe depression, including antidepressants prescribed to him, his need for continued colon cancer screening, and the follow-up medical care he is receiving for injuries suffered in a car accident. The record also includes evidence of the Applicant's gainful employment in the United States as a caregiver, earning over \$36,000 in 2014, and his family, church, and community ties. The Applicant has also submitted documentation regarding the problematic economic and health conditions in Fiji. Based on a totality of the circumstances, the record establishes that the Applicant would experience extreme hardship were he to relocate abroad as a result of his inadmissibility.

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. *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.*

Matter of J-V-

The favorable factors in this case are the hardship to the Applicant and his family if the waiver application is denied, the Applicant's involvement in the community as a volunteer and his ties to the community, church membership, the Applicant's payment of taxes, the Applicant's gainful employment, support letters on the Applicant's behalf, the approved VAWA self-petition, the Applicant's apparent lack of a criminal record in the United States, the Certificate of Rehabilitation issued to the Applicant in June 3003 by the Fiji Police, the passage of more than 26 years since the Applicant's conviction, and the passage of more than 9 years since the Applicant's fraud or willful misrepresentation with respect to his inadmissibility. The adverse factors in this case are the Applicant's fraud or misrepresentation, his conviction, and periods of unlawful presence and employment in the United States. In this case, when the 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. He has established that he would suffer extreme hardship upon relocation to Fiji and that a favorable exercise of discretion is warranted. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of J-V-*, ID# 122842 (AAO Sept. 27, 2016)