



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

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

MATTER OF K-H-Z-

DATE: DEC. 17, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of China, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On October 2, 2014, the Director determined that the Applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for having for having been unlawfully present in the United States for more than one year. The Director concluded that although the Applicant had established that refusal of admission would result in extreme hardship to his U.S. citizen spouse, the Applicant had not established that a favorable exercise of discretion was warranted. The Form I-601 was denied accordingly. On January 23, 2015, the Director affirmed his decision to deny the Form I-601, noting that the grounds for denial had not been overcome on motion.

On appeal, the Applicant contends that he merits favorable discretion. In support, the Applicant submits documentation establishing that his parents are lawful permanent residents of the United States. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) of the Act states:

- (B) Aliens Unlawfully Present.-
 - (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
 - (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year...and again seeks admission within 3 years of the date of such alien's departure or removal,
or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General (Secretary) that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

The Director found that the Applicant established that the bar to his admission would result in extreme hardship to his U.S. citizen spouse. We now turn to a consideration of 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).

As the record establishes, the Applicant entered the United States without authorization in July 1997. In February 1998, the Applicant was placed in removal proceedings. He subsequently applied for asylum. In July 1999, the Applicant’s asylum application was denied and he was ordered removed. In August 2002, his case was remanded back to the Immigration Court so that he could apply for adjustment of status. In September 2003, the Immigration Judge denied the Applicant’s adjustment of status and re-implemented the July 1999 decision to remove the Applicant. A subsequent appeal was dismissed in August 2004 and the Applicant was removed to China in July 2010.

The favorable factors include the Applicant’s U.S. citizen spouse and children and his lawful permanent resident parents; the hardships to his spouse and children and parents if the waiver application were denied; long-term residence in the United States; the payment of taxes; letters on his behalf from family, friends, and representatives of benevolent associations; home ownership; and the Applicant’s apparent lack of a criminal record. The Applicant claims that there are factors mitigating his persecution of others, which are his remorse, his age at the time he worked in family planning, his indoctrination in China, and the Applicant’s eventual release of women held in detention.

The adverse factors in the present case are the Applicant’s entry into the United States without admission, inspection, or parole; his periods of unlawful presence and employment in the United States; his failure to depart timely pursuant to a removal order; the Applicant’s removal; and the determination by an immigration judge that the Applicant engaged in the persecution of others. Specifically, in an oral decision dated July 8, 1999, the immigration judge determined that in China, the Applicant engaged in the persecution of others based on the Applicant’s conduct of detaining pregnant women and delivering them to a facility where the Applicant knew they were to be subjected to forcible abortions, sterilizations, or both. The immigration judge concluded that the record established that the Applicant “ordered, incited, assisted or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group or political opinion.” In addition, in his September 2003 decision, the immigration judge noted that while the Applicant did not have a record in the United States, and there were no negative factors regarding his conduct in the United States, he did not find any kind of factors or justification in contravention to the previous finding that the Applicant engaged in the persecution of others. The Applicant’s adjustment of status application was consequently denied in the exercise of discretion.

The adverse factors in this case, most notably, the Applicant’s participation in the persecution of others based on his active involvement in furthering the forced abortions and sterilizations of women in China, is significant and cannot be mitigated. On appeal, when we consider and balance the factors in this case, the adverse factors clearly outweigh the favorable factors. Therefore, the grant of relief in the exercise of discretion is not warranted in this case.

In application proceedings, it is the Applicant’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

Matter of K-H-Z-

ORDER: The appeal is dismissed.

Cite as *Matter of K-H-Z-*, ID# 13970 (AAO Dec. 17, 2015)