



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

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

MATTER OF Z-X-W-

DATE: JULY 14, 2016

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 the grounds of inadmissibility for unlawful presence and for a crime involving moral turpitude. *See* Immigration and Nationality Act (the Act) sections 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), and 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 that of a lawful permanent resident (LPR) 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 Director, Nebraska Service Center, denied the application. The Director determined that the Applicant had demonstrated extreme hardship to his qualifying relatives. Nevertheless, the Director concluded that the evidence of record did not establish that the Applicant merited a favorable exercise of discretion.

The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and claims that the Director erred by not finding that the positive factors outweighed the negative factors in his case.

Upon *de novo* review, we will sustain the appeal. The evidence, including the additional evidence submitted on appeal, establishes that the Applicant merits a waiver as a matter of discretion.

I. LAW

The Applicant is seeking to adjust to LPR status and has been found inadmissible for unlawful presence and for a crime involving moral turpitude.

Section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), renders inadmissible any foreign national who 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 the foreign national's last departure or removal from the United States.

Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national.

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, 8 U.S.C. § 1182(h). Section 212(h) of the Act provides for a discretionary waiver if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter.

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 merits a waiver of inadmissibility as a matter of discretion. The record supports the Director’s finding that extreme hardship to the Applicant’s spouse has been established. On appeal, the Applicant does not contest the findings of

inadmissibility for unlawful presence and for a crime involving moral turpitude, determinations supported by the record.¹

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 grounds 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.*

The Applicant's U.S. citizen spouse contends that she is experiencing psychological, medical, and financial hardships as a result of her separation from the Applicant. The record establishes that the Applicant's spouse came to the United States in 1997, obtained legal permanent resident status in 2010, and thereafter naturalized. In her affidavit, the Applicant's spouse states that she married the Applicant in 2001 and had three U.S. citizen children with the Applicant. The Applicant's spouse maintains that since the Applicant's return to China, she has become depressed, felt helpless and has had suicidal thoughts. She also indicates that she struggles with being a single mother. In addition, she states that she has been diagnosed with numerous medical conditions including gastric disorder, migraines, and insomnia.

The record includes a psychiatric evaluation and treatment report indicating that the Applicant's spouse suffers from major depressive disorder with high distress anxiety and has been prescribed antidepressants to treat her condition. The psychiatrist confirms that the Applicant's spouse has had suicidal thoughts, and considers her at high risk for suicide because of the severity of her depression and her high anxiety. According to the psychiatrist, her responsibility as a mother to three children

¹ The record indicates that the Applicant provided a fraudulent identity to border patrol agents when he was apprehended in 1997. Section 212(a)(6)(C)(i) of the Act renders inadmissible any foreign national who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act. Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national. Because the Applicant is inadmissible for unlawful presence and demonstrating eligibility for a waiver under section 212(a)(9)(B)(v) also satisfies the requirements for a waiver under section 212(i), we will not determine whether the Applicant is inadmissible under section 212(a)(2)(6)(C)(i) of the Act.

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has kept her from acting on any of these thoughts. One of the children requires additional care, as he suffers from Attention Deficit Hyperactivity Disorder, depression and other issues, which is supported in the record by a neurologist's letter. The psychiatrist notes that the child's problems exacerbate the Applicant's spouse's depression and desperation for the Applicant's help. The psychiatrist's evaluation also discusses the Applicant's spouse's medical issues, highlighting her issues with chronic migraines. The record additionally contains letters from the Applicant's spouse's friends and members of her congregation confirming her loss of weight, inability to focus and control her temper, and her sadness following the Applicant's departure to China.

In her affidavit, the Applicant's spouse also discusses how, prior to the Applicant's return to China, she stayed home with their kids and only worked part-time to supplement the family's income. She now describes herself as solely responsible for the support of her family, and indicates that her husband is unable to send her money because he makes so little in China. Letters from the Applicant, his friends, and coworkers in China confirm that his salary is too little for him to assist his spouse in the United States. The Applicant's spouse explains that her income does not cover her expenses, and that her cousin helps her with the additional money that she needs. The psychiatrist notes that the Applicant's spouse was unable to financially and physically support two of her children and sent them to China. The Applicant's spouse explains that two of her children were in China from February 2010 through February 2014, but that they were returning to the United States because they would be unable to receive free education in China without being Chinese citizens.

In regard to relocating abroad to reside with the Applicant, the Applicant's spouse contends that she would be unable to find any employment in China and that she fears returning to China after having had three children in violation of its family planning restrictions. The Applicant's spouse also indicates that education would be difficult to obtain in China, as her children are U.S. citizens and are not registered in any household registration book. Similarly, she states that healthcare for her children, especially psychiatric care for her eldest son, is also difficult to obtain in China, complicated by their U.S. citizen status. Further, the Applicant spouse maintains that she would experience emotional hardship were she to relocate abroad due to long-term separation from her community, her church, her employment, and her friends.

The favorable factors in this case are the hardship to the Applicant's U.S. citizen spouse and 3 children, born in [REDACTED] if the waiver application is denied, as detailed above; the Applicant's 15 year marriage; letters of support for the Applicant from friends, colleagues, and family members; the Applicant's long-term residence in the United States; his community ties to the United States; the Applicant's expressed remorse; and the Applicant's employment and payment of taxes while in the United States. The adverse factors in this case are the Applicant's entry without inspection, periods of unlawful presence and employment in the United States, his conviction nearly fifteen years ago for a crime involving moral turpitude, the Applicant's placement in removal proceedings, and fraud or misrepresentation.

The Applicant's criminal and immigration violations are serious in nature. Nonetheless, we find that the Applicant has established that the favorable factors outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

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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.

ORDER: The appeal is sustained.

Cite as *Matter of Z-X-W-*, ID# 16675 (AAO July 14, 2016)