



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

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

In Re: 5359056

DATE: FEB. 11, 2020

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant has applied for an immigrant visa and seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v). 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 of the Nebraska Service Center denied the application, concluding that although the Applicant established the requisite extreme hardship, he does merit a favorable exercise of discretion.

On appeal, the Applicant asserts that her favorable factors outweigh her unfavorable factors, and her waiver application should therefore be granted.

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

I. LAW

A foreign national who has been unlawfully present in the United States for 1 year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i) of the Act. A foreign national is deemed to be unlawfully present in the United States if present after the expiration of the period of authorized stay or if present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act.

The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez*, 21 I&N 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.*

II. ANALYSIS

The Director summarizes the facts that resulted in the Applicant's inadmissibility, and the Applicant does not contest the inadmissibility finding on appeal. Although the Director found that the Applicant's spouse would experience extreme hardship if the waiver application is not granted, the Director found that the Applicant does not merit a waiver as a matter of discretion.

We conclude that the Applicant does not merit a waiver as matter of discretion, as the positive factors in her case are outweighed by the negative factors, including a history of arrests and immigration violations. The Applicant entered the United States without inspection in August 1996 and remained in the United States without authorization until her removal in 2017. The Applicant was detained by immigration authorities and placed in removal proceedings in 2012 after her conviction for violating a protection order, and she was ordered removed in [redacted] 2012. She was released from immigration detention in 2013 and placed on an order of supervision, and she was removed from the United States in [redacted] 2017.

While in the United States, the Applicant was arrested several times for crimes involving domestic violence and related offenses, and she was twice convicted of violating a protection order. In 2006, she arrested and charged with aggravated assault with a deadly weapon (domestic violence), and in 2007, she was arrested and charged with battery and trespass. She was not convicted of these offenses, but her former partner obtained an order of protection against her, and in 2007, she was convicted of violating the protective order. In 2008, she was arrested for a probation violation. In [redacted] 2011, her partner, who is now her spouse, obtained an order of protection against her, and in [redacted] 2012, she was arrested and charged with property damage, criminal mischief, and contempt of court for violating the protection order. She was convicted in [redacted] 2012 of violation of an injunction for protection against domestic violence. The affidavit upon which the injunction was granted details several acts of violent behavior, including throwing several objects at the victims head, back, chest, and shoulders, which resulted in a cut above the victim's eye.

The record shows that there are positive factors in the Applicant's case, including her U.S. citizen spouse, whom she married in 2014 after she was ordered removed, and her U.S. citizen daughter, who was born in 2004. However, the record indicates that her daughter has been in the custody of her paternal grandparents for many years, and it is not clear whether she resided with the Applicant at any time before the Applicant was removed in 2017. The record contains family photographs and a short letter from her daughter, but it does not establish the nature of their relationship, the extent of the Applicant's involvement in her life, or any hardship her daughter would experience without her. In addition, although the record contains letters in support of the Applicant's waiver application, the letters are limited in detail and therefore have minimal evidentiary weight. For instance, the letter from [redacted] is from an administrator and only mentions that the Applicant has attended

the church and is committed to her spouse. It does not provide significant detail of good character or positive community involvement. Other letters from friends and family members mention some positive attributes of the Applicant, but they provide limited detail related to her service in the community and overall good character.

The Applicant's pattern of arrests and her convictions for violating two separate domestic violence protection orders entered against her, in combination with her immigration violations, reflects a lack of respect for the laws of the United States. Upon review of the record, we find that the Applicant's positive factors are outweighed by her negative factors, and she does not merit a waiver as matter of discretion.

The burden of proof in these proceedings rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has not met this burden, and the application will remain denied.

ORDER: The appeal is dismissed.