



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 21402608

Date: JUNE 29, 2022

Appeal of Queens, New York Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a citizen of Bangladesh, has applied to adjust status to that of a lawful permanent resident (LPR) and seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), for having been convicted of a crime involving moral turpitude. The Director of the Queens, New York Field denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant did not establish, as required, that denial of admission would result in extreme hardship to his qualifying relatives. The Director further concluded that the Applicant does not warrant a favorable exercise of discretion. The matter is before us on appeal. The Administrative Appeals Office reviews the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

A noncitizen 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. Section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i). Individuals found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. A waiver is available if denial of admission would result in extreme hardship to a U.S. citizen or LPR spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered “extreme,” the hardship must exceed that which is usual or expected. See *Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were the “common result of deportation” and did not alone constitute extreme hardship). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

If the noncitizen demonstrates the existence of the required extreme hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) 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). The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. PROCEDURAL HISTORY

The record reflects that the Applicant first entered the United States in 1995 using a B1/B2 visitor visa. In 2004, he misrepresented his date of birth when filing his Form, I-687, Application for Status as a Temporary Resident. In May 2011, he returned to Bangladesh and married his U.S. citizen spouse in [] 2011. In April 2012, a Form I-130, Petition for Alien Relative, filed on the Applicant's behalf was approved.¹ Prior to his consulate interview, the Department of State issued the Applicant a one-day visa to enter the United States. In November 2013, upon reentry to the United States, the Applicant was arrested and charged with conspiracy to commit bank fraud in violation of 18 U.S.C. § 1349, bank fraud in violation of 18 U.S.C. § 1344, and fraud and related activity in connection with identification documents in violation of 18 U.S.C. § 1028. In 2015, he was convicted on all charges and sentenced to time served (415 days), two years of probation, and ordered to forfeit \$700,000, representing the proceeds obtained as a result of the criminal activity.

In October 2017, the Applicant filed a waiver application for his inadmissibility under section 212(a)(2)(A)(i) of the Act for having committed a crime involving moral turpitude. The Director denied the application, concluding that the Applicant did not establish extreme hardship to a qualifying relative, as required, or merit a favorable exercise of discretion. In May 2019, the Applicant filed another waiver application for his inadmissibility under section 212(a)(2)(A)(i) of the Act. The Director denied the application, concluding that the Applicant did not establish the requisite extreme hardship to a qualifying relative or that he merits a favorable exercise of discretion. We dismissed a subsequent appeal, acknowledging that the Applicant's spouse had experienced abuse and hardships, but concluded that the Applicant had not established that he merits a favorable exercise of discretion. Specifically, we found that the record did not contain documentation indicating that the Applicant expressed remorse for his crimes or immigration violations, letters of support except from his family members, or evidence that the Applicant has been active in, or contributed to, his community in any way.

III. ANALYSIS

The Applicant does not contest the finding of inadmissibility for a crime involving moral turpitude, a determination supported by the record. Instead, the issues on appeal are whether the Applicant's qualifying relatives would experience extreme hardship if the waiver were denied and whether he merits approval of a waiver as a matter of discretion. We have considered all the evidence in the record and conclude that it does not establish that the claimed hardships rise to the level of extreme

¹ In December 2012, the Applicant filed a waiver application, relating to his inadmissibility for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act and unlawful presence under section 212(a)(9)(B)(v) of the Act. The waiver application was approved in March 2014.

hardship when considered both individually and cumulatively. Further, the Applicant has not established that he merits a waiver as a matter of discretion.

A. Extreme Hardship

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case his U.S. citizen spouse, U.S. citizen son, and U.S. citizen stepchildren. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant and 2) if the qualifying relative relocates overseas with the applicant. Demonstrating extreme hardship under both of these scenarios is not required if an applicant's evidence establishes that one of these scenarios would result from the denial of the waiver. The Applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the Applicant, or would remain in the United States, if the applicant is denied admission. See 9 USCIS Policy Manual B.4(B), <https://www.uscis.gov/policymanual> (discussing, as guidance, how an applicant can establish extreme hardship upon separation or relocation). In the present case, the Applicant's qualifying relatives indicate that they intend to remain in the United States if the waiver application is denied. The Applicant must therefore establish that if he is denied admission, his qualifying relatives would experience extreme hardship upon separation only.

On appeal, the Applicant asserts that the Director erred by not fully considering the seriousness of his spouse's mental health; his stepdaughter's medical conditions; the effect that his departure will have upon the financial security of the family's businesses; and emotional hardship to his qualifying relatives resulting from their concern for his health due to the disruption of his medical treatment and potential inability to access medical care in Bangladesh due to financial constraints. He also contends that the Director failed to consider all of the evidence in the aggregate, as required.

The Applicant's spouse's declarations in the record set forth the following claims: She is a native of Bangladesh and had a difficult childhood, marked by physical and sexual abuse as well as neglect. She also suffered from physical abuse and depression during her prior two marriages. In 2006, during the breakup of her second marriage, her former spouse continued to abuse her. In June 2007, her former spouse broke her nose and attempted to strangle her while her five-year-old daughter was in the home. She subsequently obtained a restraining order against him. With respect to employment, she owns and manages a clothing store, which she opened in 2005. She was also employed as a supervisory technical designer until she was laid off in 2007. In November 2006, she met the Applicant when he visited her clothing store, and they married in [redacted] 2011 in Bangladesh. Following the Applicant's incarceration, she experienced financial difficulties because she could not find employment as a technical designer and her clothing store sales declined. After the Applicant's release, she and the Applicant accepted an offer to start a restaurant business with an acquaintance of the Applicant, and they now own and manage four restaurants. Without the Applicant's assistance, she will be unable to manage her clothing store and the restaurant business. She would also face difficulty in providing financial support to the Applicant for his medical expenses in Bangladesh as the Applicant suffers from stage four kidney disease and recently had surgery to relieve chronic back and leg pain. In addition, she would experience emotional hardship from worrying about the Applicant's health and knowing the difficulties that her children would experience if separated from the Applicant, particularly her daughter. She maintains that before meeting the Applicant, she

experienced depression, suffered nightmares, and had thoughts of committing suicide on more than one occasion. She states that she now finally feels like she has a normal life, and she and her children would be lost without the Applicant.

The Applicant's stepdaughter's declarations in the record reflect that she is a 20-year-old college student, resides with her mother and the Applicant, and suffers from an anxiety and epileptic seizure disorder. She explains that while she has a relationship with her father and sees him on a regular basis, she has lived with the Applicant since she was 9 years old. She maintains that the Applicant helped her manage her medical conditions and has been a constant source of emotional support. The declarations of the Applicant's son and stepson indicate that the Applicant has provided invaluable financial and emotional support to their family.

In support of the hardship claims, in pertinent part, the record contains a psychological evaluation relating to a psychological assessment of the Applicant's spouse. The evaluation provides that based on two interviews, conducted in March 2017 and January 2021, the Applicant's spouse does not meet the criteria for active post-traumatic stress disorder, but given her description of previous periods of distress, she would have qualified for this diagnosis, and a separation from the Applicant is likely to exacerbate her experience of psychological distress. The record also contains medical documentation indicating that the Applicant's stepdaughter has been diagnosed with an anxiety disorder and epileptic seizure disorder, and the Applicant has been diagnosed with diabetes, hypertension, back and leg pain, and gout due to renal failure.

Upon de novo review, the Applicant has not established by a preponderance of the evidence that his qualifying relatives would endure extreme hardship upon separation. With respect to psychological and emotional hardship, we acknowledge the Applicant's spouse's statements regarding her family's reliance upon the Applicant for emotional support and the difficulties that separation from the Applicant would cause the Applicant's spouse. However, the record does not establish the severity of the Applicant's spouse's current mental health condition, the impact of any psychological or emotional hardship the Applicant's spouse's may experience in her daily life or indicate whether the Applicant's spouse could manage her mental health through treatment. We also acknowledge the statements from the Applicant's stepdaughter, a 20-year-old college student, regarding the emotional and medical support that she has received from the Applicant and the emotional hardship she would experience upon separation from the Applicant; however, the record does not indicate that she requires assistance from the Applicant to manage her conditions or that her mother could not assist her, if required. The record also does not show how the Applicant's son's and stepson's claimed emotional hardship is unique or atypical compared to other adult children separated from a parent.

With respect to financial hardship, while the Applicant's spouse may face some difficulty in running the family's four restaurants and clothing store, the record does not demonstrate that she would be unable to receive assistance from her 31-year-old son who has prior experience working in one of the family's restaurants or the Applicant's 25-year-old son who resides with the Applicant and his spouse. Alternatively, the record does not show that the Applicant's spouse would be unable hire individuals to help manage the family business or to sell one or more of the restaurants in order to make the family's business more manageable. We also acknowledge the Applicant's spouse's concern for the Applicant's health, but the record does not contain documentation that provides further detail about the nature and severity of the Applicant's condition or establish that the Applicant's spouse would be unable

to afford the Applicant's healthcare costs in Bangladesh. Further, the record does not demonstrate that the Applicant would be unable to find employment in Bangladesh and contribute to his healthcare expenses.

Based on the record, the evidence submitted does not provide the detail and specificity necessary to make a finding that the claimed hardships amount to extreme hardship when considered either individually or cumulatively. Thus, the Applicant has not established that his qualifying relatives' hardships would go beyond the common results of removal and rise to the level of extreme hardship.

B. Discretion

Although the Applicant has not established that he meets the threshold requirement for a waiver of inadmissibility, we will briefly address his concern that the Director's decision did not include a meaningful review of the discretionary factors.

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 at 299. We must balance the adverse factors evidencing an applicant's undesirability as an LPR 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.*

Here, the favorable considerations are the Applicant's family ties; his apparent lack of criminal activity since 2015; support to his family; and a statement, submitted on appeal, expressing remorse for his criminal offenses. While we acknowledge that there are favorable considerations in the Applicant's case, his misrepresentation, unlawful presence, criminal convictions involving moral turpitude, lack of letters of support from individuals outside his family, and lack of evidence that he has been active in, or contributed to his community, aside from his management of local businesses, are significant adverse factors, which outweigh the favorable factors. Moreover, while the Applicant appears to be keeping up with his court ordered restitution payments, the fact remains that the Applicant has yet to fully compensate the victim(s) of his criminal activity as ordered by the court. Consequently, we agree with the Director that a favorable exercise of discretion would not be warranted even if the Applicant were able to establish extreme hardship to his qualifying relatives. The waiver application will remain denied.

ORDER: The appeal is dismissed.