



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

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

In Re: 11233063

Date: FEB. 10, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, who has requested an immigrant visa abroad, seeks a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(h).

The Director determined that although the Applicant established eligibility for a waiver of her criminal inadmissibility based on rehabilitation under section 212(h)(1)(A) of the Act, and extreme hardship to her U.S. citizen mother for waiver purposes under section 212(a)(9)(B)(v), that the totality of the evidence did not establish that the Applicant merited a waiver in the exercise of discretion. We summarily dismissed the appeal, noting that the Applicant did not submit a brief or additional evidence and she did not specifically identify any erroneous conclusion of law or statement of fact in the Director's decision.

The matter is now before us on a motion to reopen. On motion, the Applicant provides documentation in support of her assertion that she did submit a brief to the U.S. Citizenship and Immigration Services (USCIS) National Benefits Center within 30 days of filing the previous appeal and includes a copy of the brief. She further contends that she has established that she merits a waiver in the exercise of discretion.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will grant the motion.

I. LAW

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

Individuals found inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude (CMT) may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. Where the activities resulting in inadmissibility occurred more than 15 years before

the date of the application, a discretionary waiver is available if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the foreign national has been rehabilitated. Section 212(h)(1)(A) of the Act. An individual who establishes eligibility for a waiver under section 212(h)(1)(A) of the Act must also demonstrate USCIS should favorably exercise its discretion and grant the waiver. Section 212(h)(2) of the Act.

A noncitizen 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 departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i)(II) of the Act. A noncitizen is deemed to be unlawfully present in the United States if he or she is present in the United States after the expiration of the period of authorized stay or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act. USCIS may waive this ground of inadmissibility as a matter of discretion if the noncitizen establishes that refusal of admission would result in extreme hardship to his or her U.S. citizen or lawful permanent resident spouse or parent. Section 212(a)(9)(B)(v) of the Act. Once the requisite extreme hardship is established, the noncitizen must also show that USCIS should exercise its discretion favorably and grant the waiver.

II. ANALYSIS

The Director first concluded that based on the record the Applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act (for having been convicted of a CIMT) and section 212(a)(9)(B)(i)(II) of the Act (for accruing over one year of unlawful presence in the United States and seeking admission within ten years of her last departure).¹ The Director next determined that the Applicant established eligibility for a waiver of her criminal inadmissibility based on rehabilitation under section 212(h)(1)(A) of the Act, and extreme hardship to her mother for waiver purposes under section 212(a)(9)(B)(v); we will not disturb these findings. The Applicant, therefore, must demonstrate she merits a waiver of those grounds 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 296, 299 (BIA 1996). To determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country, we must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident with the social and humane considerations presented. *Id.* at 300, 305 (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),

¹ On motion, the Applicant does not contest the Director's determination that she is inadmissible due to her conviction for a CIMT, which is supported by the record. In [redacted] 2003 the Applicant pled guilty to conspiracy to use counterfeit access devices in violation of 18 U.S.C. 1029(b)(2), a felony carrying a maximum penalty of 10 years in prison, and she was sentenced to probation for a maximum period of three years. In addition, regarding her prior unlawful presence, the record reflects that the Applicant was initially admitted to the United States on a nonimmigrant B-1/B-2 visitor's visa in 1990, and the Applicant indicated she remained in the United States after the expiration of the period of authorized stay until her departure to New Zealand in 2005. Moreover, as the Applicant resides overseas and is applying for an immigrant visa the U.S. Department of State makes the final determination on her inadmissibility.

evidence of hardship to the noncitizen 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.*

In this case, the unfavorable factors are the Applicant's lengthy presence in the United States without a lawful immigration status, criminal conviction, and probation violations. The Applicant's 2003 conviction for conspiracy to use counterfeit access devices is based on activities that occurred in 2002. In addition, while on probation she pled guilty in 2004 to driving under the influence of alcohol, a misdemeanor, and was sentenced to attend classes and pay a fine. Further, she violated the terms of her probation by departing from the United States in 2005 while still on probation, and by failing to provide notification of her departure from the United States while cooperating with an investigation, resulting in a warrant for her arrest. Although the Applicant's immigration violation and criminal record are significant negative factors, we also take into consideration the passage of more than 16 years since the 2005 probation violation relating to her 2003 conviction, and that the record does not reflect that the Applicant has other known criminal or immigration violations. In addition, the Applicant provided a certification dated 2019 from the Armenian Ministry of Foreign Affairs Consular Department indicating there are no criminal records under her name.

The Applicant's additional favorable factors include her expression of remorse and acceptance of responsibility for her actions related to her 2003 conviction; her explanation that she violated her probation because she received death threats for her cooperation with the criminal investigation; her statement of her emotional distress due to separation from her mother and the prospect of being denied admission; statements from the Applicant's mother regarding the love and support the Applicant has provided her over the years; statements from the Applicant's employers relating that as a childcare worker she is hardworking, reliable, and compassionate; statements from multiple nonprofit youth organizations reflecting her volunteer activities on their behalf; documentation demonstrating her involvement in community activities with her church; and, extreme hardship to her 72-year-old mother, particularly her mother's medical and mental health challenges.

Regarding the extreme hardship, the record indicates the Applicant's mother, who will remain in the United States if the Applicant is denied admission, has several serious health problems, including a history of gastric cancer that required gastric resection surgery, osteoarthritis and degenerative joint disease of the upper and lower extremities with difficulty walking, hyperthyroidism, hyperlipidemia, anemia, urinary incontinence, and heart valve disease with shortness of breath. She is advised not to travel by air due to those conditions and to have support at home. In addition, the mother has several mental health conditions, including major depressive disorder with psychotic features, generalized anxiety disorder, and moderate symptoms of neurocognitive disorder (dementia). A psychological evaluation dated September 2019 provides that the mother is inconsistent in recommended cognitive psychotherapy treatment, mildly disoriented and confused, unable to manage her health, and in need of a steady caregiver to help her with daily activities. She also refuses to follow recommendations for psychotropic medications. The mother's statements indicate she relies solely on the Applicant for emotional support, as she is estranged from her other daughter and has no other family members in the United States on whom she can rely.

In sum, when looking at the totality of the evidence, we find that the positive equities in this case, in particular the hardship to the Applicant's mother if she is denied admission, outweigh the negative factors, and a favorable exercise of discretion is thus warranted.

III. CONCLUSION

We have considered the additional evidence offered on motion and find that the Applicant has demonstrated that the brief was submitted within the allotted time frame of the initial appeal. Moreover, considering the brief and the previously submitted documentation, the positive equities in this case outweigh the negative factors, and a favorable exercise of discretion is thus warranted. Accordingly, the Applicant has met her burden of establishing that she is eligible for a waiver and that she merits approval of her application.

ORDER: The motion to reopen is granted and the appeal is sustained.