



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

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

MATTER OF E-L-V-S-

DATE: NOV. 19, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of the Dominican Republic, has applied for an immigrant visa. He has been found inadmissible to the United States for having committed a crime involving moral turpitude. Immigration and Nationality Act (the Act) section 212(a)(2)(A)(i)(I) of the Act, 8 C.F.R. § 1182(a)(2)(A)(i)(I). He seeks a waiver of this inadmissibility. Section 212(h) of the Act, 8 U.S.C. § 1182(h). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship for a qualifying relative(s) or where the activities for which the foreign national is inadmissible occurred at least 15 years previously; the foreign national's admission would not be contrary to the national welfare, safety, or security of the United States; and he or she has been rehabilitated.

The Acting Director of the Nebraska Service Center denied the waiver application, concluding that the Applicant had not demonstrated that a qualifying relative, his lawful permanent resident (LPR) mother, would experience extreme hardship if the waiver application were denied.

On appeal, the Applicant contends that, contrary to the Director's findings, the hardships established by the record, if viewed cumulatively, demonstrate that his mother's suffering will far exceed that normally experienced by the family members of foreign nationals who are refused admission to the United States. He asserts that his mother is sick, emotionally and physically, and that she does not have enough income to meet her financial obligations. He further contends that if she joins him in the Dominican Republic, her health will also suffer and she will not earn enough money for her basic needs.

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

I. LAW AND REGULATION

Any foreign national convicted of, 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)(I) of the Act.

Individuals found inadmissible under section 212(a)(2)(A) of the Act 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 previously, a waiver is available if the applicant's admission would not be contrary to the national welfare, safety, or security of the United States and the applicant has been rehabilitated. Section 212(h)(1)(A) of the Act. A waiver is also available if denial of admission would result in extreme hardship to an applicant's U.S. citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act.

Where eligibility is established under section 212(h) of the Act, USCIS then assesses whether a favorable exercise of discretion is warranted. If, however, an applicant's conviction is for a violent or dangerous crime, USCIS may not favorably exercise discretion unless the applicant also demonstrates "extraordinary circumstances," such as those involving national security or foreign policy considerations, or cases in which denial of the application would result in exceptional and extremely unusual hardship. Even if such a showing is made, however, the waiver may still be denied based on the gravity of the applicant's offense. 8 C.F.R. § 212.7(d).

II. ANALYSIS

The issues before us in this matter are whether the Applicant is eligible for a waiver under section 212(h) of the Act and, if so, whether he also merits a favorable exercise of discretion. The Applicant does not contest his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

The record reflects that a consular officer has found the Applicant to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for having committed a 2009 armed robbery in the Dominican Republic. In that the robbery took place less than 15 years ago, the Applicant must establish his eligibility for a waiver under section 212(h)(1)(B) of the Act by demonstrating that a qualifying relative will experience extreme hardship if the waiver application is denied.

A. Extreme Hardship under 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).

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 the applicant's evidence demonstrates that one of these scenarios will result from the denial of the waiver. An applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that he or she will relocate with the applicant, or will remain in the United States, if the applicant is denied admission. 9 USCIS Policy Manual B 4(B), <https://www.uscis.gov/policymanual>.

In the present case, the record does not indicate whether the Applicant's mother intends to remain in the United States or join him in the Dominican Republic if the waiver application remains denied. Accordingly, he must demonstrate that she will experience extreme hardship in either eventuality.

1. Hardship upon Relocation

On appeal, the Applicant argues that if his mother returns to the Dominican Republic to live with him, her health will decline and she will suffer as a result of the country's inferior medical care, as well as from the loss of the benefits she receives from the U.S. government. He also asserts that even if his mother's health improves enough for her to work in the Dominican Republic, she will be unlikely to find employment or, at least, employment that will provide her with enough income to meet her basic needs, and that he will not be able to support her as he is currently experiencing financial difficulty. The Applicant further points to the crime rate in the Dominican Republic and claims that it will pose a threat to his mother's safety. He further maintains that she will experience hardship if she loses the support network provided by her family in the United States and the U.S. Virgin Islands, and he claims she will find it difficult to adjust to life in the Dominican Republic after living more than 20 years in the U.S. Virgin Islands.

In a separate statement, the Applicant's mother asserts that she will not be able to obtain the psychological and medical services she requires in the Dominican Republic.

The record reflects that the Applicant's mother was diagnosed with major depressive disorder in 2015 and that she is on medication for both depression and anxiety. The record also establishes that, in 2016, the Applicant's mother was treated for a urinary tract infection, bilateral hydronephrosis, asymptomatic cholelithiasis not requiring surgery, costochondritis, and generalized myalgias. The record indicates that in June 2017, the Applicant's mother was admitted to a hospital as a result of a blockage of her right ureter.

While we acknowledge the preceding information regarding the Applicant's mother's mental and physical health, we do not find the record to support the Applicant's claim that her health will worsen upon relocation to the Dominican Republic or that she will not be able to receive the medical treatment she requires. The record contains no evidence that addresses how a return to the Dominican Republic might affect the Applicant's mother's mental or physical health. Neither does it provide any information on the Dominican healthcare system, although we note that the record

reflects that the Applicant's mother's depression was initially diagnosed in 2012 by a doctor in the Dominican Republic and that she received treatment for her depression at a Dominican Hospital.¹ Additionally, we do not find the record to document that the conditions for which the Applicant's mother was treated in 2016 and 2017 continue to require medical care.

The record also lacks the evidence necessary to establish that the Applicant's mother would experience financial hardship if she joins the Applicant in the Dominican Republic. Although the Applicant submits an online report that reflects the 2016 unemployment rate in the Dominican Republic was 14 percent, this single piece of evidence does not demonstrate that the Applicant's mother will face unemployment or a low-wage job upon her return. The report submitted by the Applicant does not break down the 14 percent unemployment figure by age group, industry, or geographic area, or provide any other information on the Dominican economy or job market that indicates the Applicant's 52-year-old mother, who has experience in managing restaurant operations in the U.S. Virgin Islands, would be unable to find meaningful employment in the Dominican economy. Nor does the record establish that the Applicant would be unable to provide his mother with financial support if she does not find a job or remains unable to work. His assertion that he is experiencing difficult financial circumstances and a 2017 letter from a friend in the Dominican Republic that indicates he is not working are insufficient proof that he does not have the financial resources to support his mother upon her return.

To demonstrate the crime levels that he asserts will place his mother at risk, the Applicant has submitted a printout of travel information on the Dominican Republic published by the U.S. Department of State. The printout, dated July 1, 2016, advises U.S. travelers of precautions to be taken when in the Dominican Republic and includes a warning about the prevalence of criminal activity in the country. We also note that the State Department's current travel advisory for the Dominican Republic counsels U.S. citizens to "exercise increased caution" when visiting the Dominican Republic "due to crime." However, these two travel advisories do not establish that the Applicant's mother would not be safe upon relocation, and the record does not establish the threat that crime poses to the residents of Santo Domingo, the city where the Applicant lives and to which his mother would likely return. Accordingly, the Applicant has not demonstrated that a return to the Dominican Republic will endanger his mother.

Additionally, we do not find the record to contain sufficient evidence to establish the emotional hardship that the Applicant claims his mother will experience as a result of separation from family members in the U.S. Virgin Islands and difficulty adjusting to a new life in the Dominican Republic. While we acknowledge that the separation of families is always emotionally difficult and that relocation generally results in significant disruptions and difficulties, we do not find the record to demonstrate the specific impacts that leaving family behind in the U.S. Virgin Islands and starting a life in the Dominican Republic are likely to have on the Applicant's mother, particularly in relation

¹ This information is found in a January 2016 information sheet that provides background on the Applicant's mother's physical and mental health. The sheet is signed by a clinical social worker in the U.S. Virgin Islands Department of Health (Division of Mental Health) and supported the Applicant's mother's application for government benefits.

to her mental health. As a result, we do not find the Applicant to have demonstrated the emotional hardships that he asserts his mother will experience upon relocation.

For the reasons discussed, the record does not establish the hardship claims put forward by the Applicant and, therefore, that his mother will experience extreme hardship if the waiver application is denied and she joins him in the Dominican Republic.

2. Hardship upon Separation

In support of the waiver application, the Applicant asserts that as a result of their separation, his mother has suffered severe economic, health, and emotional consequences. He maintains that she is now effectively unemployed and sick, and that she needs him to come live with her to support her emotionally, physically, and financially.

In a separate statement, the Applicant's mother states that the revocation of the Applicant's visa has resulted in her physical and psychological deterioration. She asserts that, as a result, she has not been able to keep a job and has been receiving food stamps, cash assistance, and Medicaid. The Applicant's mother maintains that if the waiver application were to be approved, the Applicant could work and assist her with her debts and medical expenses.

While we note these claims, we find no purpose is to be served by a consideration of whether the Applicant's mother would experience extreme hardship if the waiver application is denied and she remains in the U.S. Virgin Islands. The Applicant has not demonstrated extreme hardship to a qualifying relative upon relocation, and, as stated above, the record does not contain any statement or evidence that his mother would remain in the United States without him if he is denied admission. In the absence of a statement that she intends to remain in the United States without him, we cannot conclude that such hardship would actually result from denial of his waiver application.

The Applicant must establish that denial of the waiver application would result in extreme hardship to a qualifying relative both upon separation and relocation. As the Applicant has not established extreme hardship to his mother in the event of relocation, we cannot conclude he has met this requirement. As such, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion.²

² The Applicant may be subject to the heightened discretionary standard imposed by 8 C.F.R. § 212.7(d) in cases where an applicant has committed a violent or dangerous crime. However, since the Applicant has not established extreme hardship as required under section 212(h)(1)(B) of the Act, we need not determine whether his robbery offense was a violent or dangerous crime that would require the presence of extraordinary circumstances to warrant a favorable exercise of discretion.

III. CONCLUSION

The Applicant has been found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. For the reasons discussed, he has not demonstrated that a qualifying relative will experience extreme hardship if the waiver application is denied. Therefore, the application will remain denied.

ORDER: The appeal is dismissed.

Cite as *Matter of E-L-V-S-*, ID# 1767451 (AAO Nov. 19, 2018)