



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

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

MATTER OF E-C-Z-

DATE: MAR. 31, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of Germany, seeks a waiver of the ground of inadmissibility for a crime involving moral turpitude and multiple criminal convictions. *See* Immigration and Nationality Act (the Act) section 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 must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services 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 record established hardships to the Applicant's qualifying relative, his U.S. citizen spouse, the Applicant did not establish that he warranted a waiver as a matter of discretion

On appeal, the Applicant states that he is not inadmissible for a crime involving moral turpitude or for multiple criminal convictions and the Director erred in not giving adequate consideration to the positive factors in his case.

Upon *de novo* review, we will dismiss the appeal. The Applicant does not warrant the favorable exercise of discretion.

I. LAW

Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), provides that any foreign national convicted of a crime involving moral turpitude (other than a purely political offense) is inadmissible. Section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), provides that any foreign national who has been convicted of two or more offenses (other than purely political offenses), regardless of whether or not the convictions arose from a single trial or arose from a single scheme of conduct involving moral turpitude and whether or not the offenses involved moral turpitude, is inadmissible if the aggregate sentence of confinement actually imposed is five years or more.

Individuals found inadmissible under section 212(a)(2)(A) or section 212(a)(2)(B) of the Act may seek a waiver of inadmissibility under section 212(h) of the Act. 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.

II. ANALYSIS

The issues on appeal concern whether the Applicant is inadmissible for his criminal convictions, whether the Applicant's U.S. citizen spouse will suffer extreme hardship if he is denied admission, and, if so, whether the Applicant warrants a favorable exercise of discretion. A Consular Officer in Germany found the Applicant inadmissible for a crime involving moral turpitude and for multiple criminal convictions. The Director found that the Applicant did not warrant a favorable exercise of discretion. On appeal, the Applicant contends that the actions which led to his convictions would not be considered criminal activity in the United States because they would be protected speech. The Applicant also states that his wife is experiencing extreme hardship as a result of his inadmissibility and he warrants a favorable exercise of discretion. We affirm the Director's decision and find that the Applicant does not warrant the favorable exercise of discretion.

A. Inadmissibility

As stated above, a Consular Officer found the Applicant inadmissible under sections 212(a)(2)(A) for a crime involving moral turpitude and 212(a)(2)(B) of the Act for multiple criminal convictions. The record shows that in 2007 the Applicant was convicted in Germany of 14 counts of incitement to hatred and one count of violating the memory of the dead. The Applicant was sentenced to an aggregate of five years in prison. The Applicant contends that the actions which led to his convictions would not be considered criminal activity because they would be constitutionally protected speech.¹

Because the Applicant is residing abroad and applying for an immigrant visa, the U.S. Department of State makes the final determination concerning his eligibility for a visa. Thus, as a result of the Consular Officer's finding of inadmissibility for a crime involving moral turpitude and multiple criminal convictions, the Applicant requires a waiver under section 212(h) of the Act.

The record indicates that the Applicant may be inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact to gain entry into the United States. We issued a notice of intent to dismiss stating that the record indicated the Applicant willfully misrepresented his immigrant intent when, shortly after his marriage to a U.S. citizen, he entered the United States as a visitor under the Visa Waiver Program and did not depart. In response, the Applicant stated that he did not misrepresent his immigrant intent, but decided months after entering the United States to

¹ A foreign conviction can be the basis for a finding of inadmissibility only where the conviction is "for conduct which is deemed criminal by United States standards." *Matter of Ramirez-Rivero*, 18 I&N Dec. 135, 137 (BIA 1981). In *Brandenburg v. Ohio*, the Supreme Court held that constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. 393 U.S. 827, 838 (1969).

apply for lawful permanent residence. As the Applicant has been found inadmissible for his criminal convictions and requires a waiver under section 212(h) of the Act, we need not determine whether he is also inadmissible for fraud or misrepresentation and requires a waiver under section 212(i) of the Act. Establishing eligibility for a waiver under section 212(h) of the Act will also meet the requirements for a waiver under section 212(i) of the Act for fraud or misrepresentation if the Applicant is found inadmissible under this ground.

B. Waiver

The Applicant must demonstrate that denial of his application would result in extreme hardship to his U.S. citizen spouse. We find that the Applicant has demonstrated that his U.S. citizen spouse will suffer extreme emotional hardship as a result of his waiver being denied.

The record establishes through a statement from the Applicant's spouse, two psychological evaluations, letters from friends, financial documentation, and court documentation that the Applicant's spouse risks arrest and possible imprisonment if she were to relocate to Germany. In addition, the record indicates that as a result of the Applicant's spouse's history of loss during World War II and the struggles she faced while raising a disabled son, she quickly grew emotionally attached to the Applicant. The Applicant's spouse states that the Applicant is the only person in her life that supports her emotionally and that she is also suffering financially from separation. Numerous letters submitted by friends support these assertions. The psychological evaluations in the record state that the Applicant's spouse is suffering chronic stress, depression, anxiety, insomnia, loneliness, and posttraumatic stress disorder stemming from her experiences during World War II. The Applicant's spouse has been a U.S. citizen for 43 years. She is in her late seventies and has been married to the Applicant for 16 years. We find that given the Applicant's spouse's age, length of residence in the United States, prospect of arrest if she relocates to Germany, financial hardship, and emotional hardship, she will suffer extreme hardship as a result of the Applicant's waiver application being denied.

C. Discretion

We now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on an 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 an 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.*

The Applicant states that his case includes numerous positive factors, including: extreme hardship to his U.S. citizen spouse as a result of his waiver being denied, a lack of any criminal convictions outside of his convictions in Germany, and numerous statements in the record describing the Applicant as a caring and compassionate individual to his wife and friends. He also submits documentation of financial ties to the United States.

The negative factors in the Applicant's case include his long history of inciting racial, ethnic, and religious hatred. The record shows that the Applicant is a historical revisionist and denier of the Holocaust, distributing writings, books, tapes, videos, and broadcasts to promote his views. The record indicates further that these publications agitated for aggressive behavior against Jews. Furthermore, the Applicant has been a leader in these activities for decades and has shown no regret or remorse for his actions. Thus, we find that the negative factors in the Applicant's case outweigh the positive such that a favorable exercise of discretion is not warranted.

III. CONCLUSION

The appeal will be dismissed. Although the Applicant has established extreme hardship to a qualifying relative, he does not merit a waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of E-C-Z*, ID# 122769 (AAO Mar. 31, 2017)