



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

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

In Re: 22278387

Date: AUG. 30, 2022

Appeal of San Francisco, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for willful misrepresentation of a material fact. The Director of the San Francisco, California Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds, concluding that the Applicant did not establish a qualifying relative will suffer extreme hardship if she is denied admission, and dismissing the subsequent joint motion to reopen and reconsider. The matter is now before us on appeal. On appeal, the Applicant submits copies of the additional evidence she provided on motion to the Director and asserts that the record establishes extreme hardship to her U.S. citizen spouse and Lawful Permanent Resident (LPR) mother. We review the questions raised 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 remand the matter to the Director for the entry of a new decision.

I. LAW

Any foreign national who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act. There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or LPR spouse or parent of the foreign national. If the foreign national demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its discretion. Section 212(i) 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). In these proceedings, it is an applicant’s burden to establish

eligibility for the requested benefit. *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Except where a different standard is specified by law, an applicant must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Director found the Applicant, a citizen of Peru, was inadmissible for willful misrepresentation of a material fact for procuring admission to the United States using a fraudulent passport. The Applicant does not contest the finding of inadmissibility on appeal. The issues on appeal are whether the Applicant has established extreme hardship to her U.S. citizen spouse or LPR mother and whether she merits a waiver as a matter of discretion. We have considered all the evidence in the record and conclude that it does establish that the claimed hardships to the Applicant's spouse rise to the level of extreme hardship when considered both individually and cumulatively.

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, extreme hardship upon separation or relocation).

In the present case, the Applicant's spouse indicates he is unable to move to Peru and intends to remain in the United States if the waiver application is denied. The Applicant has provided the following documentation in support of the waiver application and with the joint motion to reopen and reconsider submitted to the Director: statements from the Applicant and her spouse, mother, family members, and friends; biographic and civil documents; employment and financial documentation; her spouse's and mother's psychological evaluations; medical records for the Applicant and her spouse, mother, and child; her children's school documents; photographs; country conditions information for Peru; and medical articles.

The Applicant's spouse contends that he would suffer emotional, psychological, medical, and financial hardship upon separation. He claims that he is emotionally and psychologically dependent on the Applicant, whom he married in 2013, and her absence would cause irreparable damage to his mental health and that of their sons. Her spouse indicates that if he loses his partner, he will suffer extreme anxiety, stress, and depression, due in part to his painful childhood experiences with a father who was addicted to drugs and alcohol and abandoned his family. Her spouse states that the Applicant provides emotional, physical, and financial support to him and their sons, who are currently three and ten years old; that he relies on the Applicant to provide caregiving assistance for their young children; and that he would suffer financial hardship without her contributions toward the household expenses. He notes that their children require special care and attention by the Applicant, especially their youngest child who has experienced behavioral and speech delay challenges, is undergoing evaluations to determine whether he is autistic, and was diagnosed with Pseudoesotropia which affects his vision.

In denying the application and dismissing the subsequent joint motion to reopen and reconsider, the Director determined that the Applicant did not establish her spouse or mother would suffer extreme emotional, medical, or financial hardship upon separation. Upon review, the record reflects that the Director erred by not addressing all relevant evidence related to the claimed hardship.

The denial and decision to dismiss the joint motion stated that all submitted documentation was reviewed, including the new evidence submitted on motion related to the Applicant's and her spouse's youngest son, such as his medical and educational records; her spouse's updated psychological evaluation and personal statement; and additional financial documentation reflecting the Applicant's income contributions and the family's living expenses. However, the Director's decision did not include an analysis explaining why the new evidence did not overcome the deficiencies noted in the denial. Further, the Director failed to fully consider the spouse's reliance on the Applicant to assist with the caregiving duties for their young children or address how the claimed difficulties the Applicant's and spouse's children may experience without the Applicant would impact the spouse. The significant shifting of caregiving or income-earning responsibilities would often weigh heavily in support of a finding of extreme hardship to the qualifying relative. *See 9 USCIS Policy Manual B.5(E)5* (discussing, as guidance, the substantial displacement of care of an applicant's children and how this significant factor may impact whether a denial of admission would result in extreme hardship). Additional emotional, psychological, and/or economic stress for the qualifying relative could exceed the levels of hardship that ordinarily result from family separation and rise to the level of extreme hardship provided that the Applicant submits sufficient supporting evidence. *Id.*

The submitted psychological evaluations for the Applicant's spouse and his personal statements indicate he relies on the Applicant's emotional support to manage his depression and anxiety. Her spouse states that he is very concerned about his ability to care and provide for their young children without the Applicant's support and assistance; pay for childcare in his spouse's absence in addition to meeting current financial obligations; and handle full-time employment, parenting, and household responsibilities by himself considering his vulnerable emotional state which would be exacerbated without the Applicant. The psychological evaluations also note the Applicant's spouse was diagnosed with Major Depressive Disorder and Generalized Anxiety Disorder and he is concerned about the long-term adverse mental health impact on him and their children if they lose their mother and primary caregiver. Further, the submitted report from the Autism Spectrum Disorder Center discusses the youngest son's behavioral and speech difficulties; recommends continued monitoring and special education services; and references the ongoing need for the Applicant and her spouse to learn behavioral intervention techniques and actively participate in their son's development.

In addition to the claimed emotional and psychological impact on the Applicant's spouse, the Director failed to fully consider the spouse's financial reliance on the Applicant and the impact on her spouse if she could no longer perform the primary caregiving duties for their young children or contribute to the household income. Her spouse asserts that he requires the Applicant's income to support their household expenses; though they are both employed, her contributions are required to meet their monthly expenses; and he would suffer significant financial hardship if he needed to pay for childcare in the Applicant's absence.

The Director indicated in the denial that the record only contained documentation reflecting the Applicant's and her spouse's joint income in 2017, did not include individual W2 forms or other information demonstrating their respective income, and lacked documentation regarding monthly expenses or other evidence to support a claim of financial hardship. Though the Applicant submitted additional financial documentation with the joint motion to reopen and reconsider, such as their individual 2019 W2 forms and federal income tax return, showing their respective and combined income, and a detailed list of monthly expenses, the Director dismissed the joint motion without addressing the new and pertinent evidence. The record reflects that in 2019, the Applicant's spouse earned approximately \$51,000, and the Applicant earned approximately \$29,000, while also acting as their children's primary caregiver. The submitted evidence reflects that loss of the Applicant's income, in addition to new childcare costs that may accrue in her absence or the decrease in her spouse's income resulting from his increased caregiving responsibilities, would result in financial hardship to her spouse.

Based on the totality of the evidence, we find that the emotional, psychological, physical, and financial hardship to the Applicant's spouse upon separation from the Applicant, when considered in the aggregate, rises to the level of extreme. As the Director did not make a discretionary finding, we will remand the matter for determination of whether the Applicant also merits a waiver in the exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.