



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

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

In Re: 15842802

Date: JAN. 31, 2022

Appeal of New York, New York Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i), for fraud or misrepresentation.

The Director of the New York, New York Field Office denied the application, concluding that the Applicant did not establish extreme hardship to his U.S. citizen spouse. On appeal, the Applicant does not contest the finding of inadmissibility. He contends that, among other things, the Director erred in failing to analyze the hardships the Applicant's U.S. citizen spouse would face upon relocation.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will remand the matter to the Director for the entry of a new decision.

I. LAW

Any noncitizen 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 lawful permanent resident spouse or parent of the noncitizen. If the noncitizen demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. 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 the applicant's burden to establish by

a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant was found inadmissible for entering the United States with a fraudulently obtained visa, which he does not contest. The issue on appeal is whether the Applicant has demonstrated his U.S. citizen spouse would experience extreme hardship upon denial of the waiver.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case his U.S. citizen spouse. Section 212(i) of the Act. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relatives remain in the United States separated from the applicant and 2) if the qualifying relatives relocate overseas with the applicant. *See 9 USCIS Policy Manual B.4(B)*, <https://www.uscis.gov/policymanual> (providing, as guidance, the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. *See id.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002)). The applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that they would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. *See id.* In this case, the record contains clear statements from the Applicant's spouse that she would relocate with the Applicant to his country if his waiver is denied. The Applicant must therefore establish that if he is denied admission, his qualifying relative would experience extreme hardship upon relocation to Haiti.

The Director stated in his decision that any results of relocation "will be given no adjudicative weight in the instant decision-making process" because the Applicant's spouse would not be legally compelled to accompany him to his country. The Director erred in not considering evidence of extreme hardship upon relocation even though the Applicant's spouse clearly stated that she would relocate with the Applicant. On appeal, the Applicant asserts that the Director erred by not considering both scenarios. However, considering both scenarios is required only if the record does not sufficiently establish the qualifying relative's intent upon denial of the waiver request. Further, if the Applicant does not establish extreme hardship upon either ground, for example, separation, it is not necessary to reach the issue of whether she would experience extreme hardship upon relocation.¹ However, in this case, the Director erred because the Applicant's qualifying relative clearly states that she intends to relocate with the Applicant; therefore, the Director should have considered the evidence submitted to establish extreme hardship upon relocation.

III. CONCLUSION

Because the record does not indicate that the Director has considered the evidence provided by the Applicant regarding the impacts of relocation, we will return the matter to the Director to consider the

¹ *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("agencies are not required to make findings on issues the decision of which is necessary to the results they reach."); *see also Matter of L-A-C-*, 16 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where a petitioner or applicant is otherwise ineligible).

evidence of extreme hardship and to determine whether the Applicant warrants a waiver in the exercise of discretion, if the Director finds that extreme hardship to a qualifying relative has been established.

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