



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

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

In Re: 21218558

Date: JUNE 2, 2022

Appeal of Denver, Colorado Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The Director of the Denver, Colorado Field Office denied the application, finding that the Applicant had not established that his U.S. citizen spouse would suffer extreme hardship upon his removal from the United States.

On appeal, the Applicant contends he has established that his spouse will experience extreme hardship due to his inadmissibility.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This office reviews the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, as explained below, we will remand the matter to the Director for the entry of a new decision.

I. LAW

A 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 discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. 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).

If the noncitizen demonstrates the existence of the required hardship, then he or she must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the noncitizen to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez*, 21 I&N 296, 299 (BIA 1996).

II. ANALYSIS

The Applicant, a native and citizen of Jamaica, was found inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation. Specifically, the record establishes that the Applicant misrepresented his marital status and family ties in the United States when he applied for a nonimmigrant visa in 2019.¹ Thus, the Applicant must seek a waiver of this inadmissibility. The issue on appeal therefore is whether the Applicant has established extreme hardship to a qualifying relative. We have considered all the evidence in the record and conclude that the claimed hardships to the Applicant’s U.S. citizen 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. 9 *USCIS Policy Manual* B.4(B), <https://www.uscis.gov/policymanual>. In the present case, the record contains no statement from the Applicant’s spouse indicating whether she intends to remain in the United States or relocate to Jamaica if the waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

The Applicant’s spouse contends that she would experience extreme emotional and financial hardship were she to remain in the United States without the Applicant. She states that she met the Applicant after divorcing a man who was abusive to her and her daughter, and the Applicant has played a positive role in her and her children’s lives.² She details that her daughter suffers from ADHD, disruptive mood dysregulation disorder, and anxiety as a result of the physical abuse she previously experienced at the hands of her ex-husband, and while her daughter is taking medication and attending therapy, the Applicant’s presence has provided her stability and comfort and helped her be less volatile and angry. However, if the Applicant relocates abroad, his spouse maintains that it will be traumatic for her and

¹ In an April 2021 statement, the Applicant asks for forgiveness for indicating on his nonimmigrant visa application that he was single when in fact he was married to a lawful permanent resident who was residing in the United States.

² The Applicant’s spouse’s U.S. citizen son was born in 2013 and her U.S. citizen daughter was born in 2008.

her children, and she fears that her daughter's mental health conditions will worsen, thereby causing her extreme hardship.

The Applicant's spouse also explains that the Applicant works during the day while she works the evening shift and as a result, her children have someone to care for them in the evenings, ensuring they do their homework, are fed, and go to bed on time. However, were the Applicant to relocate aboard, she asserts that she would have to pick up her children from a friend's house late at night when her shift ends, as she did before she married the Applicant, and she will not be able to work a morning shift due to her responsibilities to her children, and such a predicament will cause hardship to her and her children. Moreover, the Applicant's spouse contends that she will not be able to financially support the household on her own; she notes that the Applicant will not be able to contribute financially while in Jamaica due to the problematic financial conditions there. Finally, the Applicant's spouse expresses concern for her husband's safety and well-being in Jamaica due to the high rates of crime and violence.

In support of the emotional hardship referenced, the Applicant's spouse has submitted a citation and temporary civil protection order against her former spouse, due to physical and verbal abuse towards her and her daughter. The Applicant has also submitted extensive documentation establishing his stepdaughter's mental health condition and treatment plan since May 2019. The record indicates that the Applicant's stepdaughter was hospitalized five times for mental health related events and suicidal ideation before her 14th birthday, and she was expelled from a traditional public school system and an inpatient program; she was ultimately moved into an intensive, in patient, psychiatric program. Although the record indicates that she has been discharged from the program, her treatment is ongoing and individual and family therapy is recommended. The Applicant has also submitted a letter from his stepdaughter expressing her love and support for him, and support letters from friends and family members detailing the strong bond the Applicant has with his wife and stepchildren. Regarding the financial hardship referenced, the Applicant has submitted documentation to establish his current financial contributions to the household, and the financial shortcomings if he relocates abroad and is unable to contribute. The Applicant has also submitted information about the problematic country conditions in Jamaica, including crime and violence.

The Applicant's spouse also asserts that she would experience extreme emotional and financial hardship were she to relocate to Jamaica if her spouse is not granted a waiver of inadmissibility. The Applicant's spouse states that she was born in Liberia and relocated to the United States in 1995 as a refugee and she has no ties to Jamaica. Further, she contends that long-term separation from the community, her home, her friends, and her extended family would cause her hardship. Moreover, the Applicant's spouse asserts that her daughter needs stability and continued treatment with the doctors familiar with her conditions and relocating to another country would exacerbate her daughter's mental health conditions, thereby causing her extreme hardship. The Applicant's spouse also states that when the Applicant returned to Jamaica after his seasonal work was done in the United States, she would have to send him money just so that he could buy food to eat and thus, were they all to relocate abroad due to the Applicant's inadmissibility, she and her children would experience financial hardship. The record contains documentation establishing the Applicant's spouse's home ownership, the Applicant and his spouse's gainful employment in the United States, and financial responsibilities. The record also contains evidence of the Applicant's stepdaughter's mental health conditions and treatment plan in the United States. The Applicant has also submitted documentation about the problematic country conditions in Jamaica, including evidence establishing that the U.S. Department of State recommends

that U.S. citizens reconsider travel to Jamaica due to violent crime and avoid all travel to select areas in the Applicant's hometown.

We find that the new evidence submitted by the Applicant on appeal adequately addresses the insufficiencies identified by the Director to establish, when considered alongside previously submitted evidence, that the Applicant's spouse will experience extreme hardship if she separates from the Applicant or if she relocates to Jamaica with him. As the Director did not previously consider whether the Applicant has established that he merits a favorable exercise of discretion, we find it appropriate to remand the record for the Director to determine in the first instance whether the Applicant merits a favorable exercise of discretion pursuant to section 212(i) of the Act.

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