



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

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

In Re: 22756455

Date: OCT. 12, 2022

Appeal of Newark, New Jersey 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 (LPR) 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 Newark, New Jersey Field Office denied the application, concluding that the record did not establish that the Applicant's United States citizen spouse, the only qualifying relative, would experience extreme hardship if the waiver was not granted.

On appeal, the Applicant does not contest the finding of inadmissibility, a finding supported by the record. He argues that his spouse will experience extreme hardship and that he warrants a positive discretionary finding.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the waiver application for 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, 8 U.S.C. § 1182(a)(6)(C)(i). 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 foreign national 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 foreign national 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). We must balance the adverse factors evidencing the 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.*

II. ANALYSIS

The Applicant, a native and citizen of Mexico, was found inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation. Specifically, the Applicant admits that in 1991, he entered the United States using a fraudulent passport and visa. He also admits that he knowingly listed incorrect information regarding his entry and exit from the United States in his first application for adjustment of status. He does not contest the inadmissibility findings. The issue on appeal is whether the Applicant has established extreme hardship to his qualifying relative spouse. We have considered all the evidence in the record and conclude that the claimed hardships to the Applicant's spouse rise to the level of extreme hardship.

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 scenarios is not required if an applicant's evidence establishes that one of these scenarios would 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 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, <https://www.uscis.gov/policymanual>. In the present case, the Applicant's spouse does not indicate if she intends to relocate with the Applicant to Mexico or remain in the United States if the waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship upon both separation and relocation. To show this, the record contains statements from the Applicant and her spouse, financial, medical and employment documentation, as well as biographic and civil documents, and letters from family attesting to the Applicant's character.

In support of the Applicant's emotional and medical hardship claims, the Applicant submits a statement from his spouse explaining that the Applicant is her primary support system. The couple has been married since [REDACTED] 1996, and they raised two children together. One of their children is serving as a Marine Corps Sergeant in the U.S. military and can be deployed at a moment's notice. The Applicant's spouse explains that she was diagnosed with cancer and now suffers from lymphedema in her right leg. She explains that her job provides her health insurance as well as leave when she needs it. She states that even with her accommodating job, she sometimes struggles at work because her condition causes pain when she moves. She explains that moving to Mexico with her husband would cause her extreme hardship because she would have to give up the health care team and health insurance she relies upon. Furthermore, she would lose her two sons and friends that are part of her support systems, as well as the job she has had for over ten years. On the other hand, remaining in the United States without her husband would be a hardship because he provides her with the daily support she needs because of her serious health problems. She provides examples of the day-to-day tasks that her husband helps her with. Without him, she would be living alone and unable to handle these daily tasks or continue working. Other evidence corroborating their claims of emotional and medical hardship to her include three letters from the Applicant's spouse's treating physicians, an employment letter, and affidavits from her two sons, as well as the Applicant's own personal statement.

We find the evidence submitted by the Applicant sufficient to establish the Applicant's spouse will experience extreme hardship in both a separation and relocation scenario. As such, the Applicant has established extreme hardship to a qualifying relative for the purpose of a section 212(i) waiver for fraud or willful misrepresentation.

The Director did not consider the issue of discretion. Therefore, we will remand the matter to the Director for a determination of whether the Applicant now merits a favorable exercise of discretion, taking into account the foregoing analysis showing that the Applicant has established extreme hardship to his qualifying relative spouse. In addition, we note that USCIS has previously granted the Applicant the discretionary benefit of parole-in-place for military families, which is an additional favorable factor to be considered.

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