



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

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

In Re: 21712830

Date: SEP. 15, 2022

Appeal of San Diego, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for adjustment of status and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the San Diego, California Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (Form I-601), concluding that the Applicant had not established extreme hardship to his U.S. citizen father, a qualifying relative, as required to demonstrate eligibility for the discretionary waiver under section 212(i) of the Act. On appeal, the Applicant submits new evidence and asserts his eligibility for the waiver.

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; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review 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, we will remand the matter to the Director for further proceedings consistent with our decision here.

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). A discretionary waiver of this ground of inadmissibility may be granted 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. If the noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

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).

II. ANALYSIS

The Director determined that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation of a material fact for the purpose of procuring a benefit under the Act. The Applicant does not contest the finding of inadmissibility, a determination supported by the record, as he admitted on his Form I-485, Application for Adjustment of Status (adjustment application), that, in order to gain admission to the United States, he presented as his own a lawful permanent resident card belonging to another individual to obtain admission to the United States on two occasions in 2004.

The sole issue on appeal is whether the Applicant demonstrated that the qualifying relative, his U.S. citizen father, would experience extreme hardship if the Applicant is refused admission, as required to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. In order to establish eligibility for a waiver under section 212(i) of the Act, the Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or relatives, in this case his U.S. citizen father.¹ An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant or 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. 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 Applicant’s father has indicated in his statement on appeal that he would remain in the United States if the Applicant is denied admission. The Applicant must therefore establish that if he is denied admission, his father would experience extreme hardship upon separation.

In denying the Form I-601 and concluding that the Applicant had not established the requisite extreme hardship to his father, the Director acknowledged, among other hardship factors, the documentation regarding the father’s financial hardship in the event of his separation from the Applicant due to the Applicant’s inadmissibility. However, the Director found that the evidence did not sufficiently

¹ The Applicant explicitly asserts, on appeal and below, that his U.S. citizen father is the qualifying relative for the purpose of demonstrating extreme hardship to a qualifying relative upon which he can base a waiver application under section 212(i) of the Act. However, he also discusses and submits evidence regarding claimed hardships to his mother, who is also his father’s spouse, along with other relatives. We may consider the hardship to the other relatives as it affects the claimed qualifying relative. *See 9 USCIS Policy Manual, supra* at B.4(D)(2). Furthermore, “even if such derivative hardship does not rise to the level of extreme hardship by itself, it is a factor that should be considered when determining whether the qualifying relative’s hardship, considered in the aggregate, rises to the level of extreme.” *Id.*

establish that the financial hardship his father would experience upon separation from the Applicant would rise to the level of extreme hardship. Specifically, the Director determined that while the father was unemployed due to the COVID-19 pandemic, the evidence did not indicate that he could not find employment again in the future, and the record lacked sufficient documentation of the father's monthly expenses to assess the claim of extreme financial hardship in the Applicant's absence. The Director noted that the Applicant had not provided documentation of the father's monthly costs or bills, such that it was difficult to evaluate the claimed level of financial hardship to the Applicant's father in the Applicant's absence. Additionally, the Director acknowledged the claims of medical and psychological hardship to the Applicant's father, but determined that the submitted evidence did not sufficiently demonstrate the level of care the Applicant indicated that his father required; show that his father suffers a disability that prevented him from performing daily care tasks and necessitated the Applicant's assistance; or reflect that his father's psychological symptoms are continuous, ongoing, and severe.

On appeal, the Applicant asserts that he has established the extreme hardship his father would experience if the Applicant is denied admission and submits additional evidence in support of this claim. He contends on appeal that he is his father's primary caretaker and his father is dependent on him physically, psychologically, and financially. The Applicant states that he is the only reliable person who can support his elderly parents. Specifically regarding financial hardship, the Applicant states that his father no longer receives unemployment benefits after losing his job due to the COVID-19 pandemic. He asserts that his father can no longer work due to his health, given both the risks related to COVID-19 he would face as a housekeeper and his advanced age of 77 years. The Applicant claims that his father and mother, both of whom have documented medical concerns and take medications, collectively receive only \$1207 monthly in Social Security benefits, which fund their food, clothing, transportation, medication, and some utilities. He contends that his parents have no other income and that he is responsible for the monthly mortgage payment of \$2,745 for their home, which the record indicates the Applicant shares with his parents.

In a new personal statement on appeal, the father describes the Applicant as his main caretaker and states that he and his spouse depend on the Applicant's financial support and with their medical appointments and medications. He also describes increasing medical difficulties in the past year which informed his decision not to return to work, including knee pain for which he has had surgery, daily numbness in his arms, problem with memory, cataracts for his eyes, a hospitalization for chest pain and a panic attack, and concerns for contracting COVID-19. In addition, the Applicant also submits on appeal personal statements from his mother and all eight of the Applicant's siblings; Social Security statements for his mother and father reflecting their combined monthly Social Security benefits of \$1,207 as the Applicant asserted; lists of monthly expenses for the Applicant and his parents that appear to exceed the Applicant's parents' claimed monthly income; a psychological evaluation reflecting the father's increased symptoms of his previously diagnosed adjustment disorder with mixed anxiety and depressed mood. Both of the parents' statements and the siblings' individual statements detail how the siblings are not able to assist their parents in the same manner as the Applicant due to their own various financial or health difficulties, including a daughter who is unable to drive due to a vision problem, and/or responsibilities to their own children. Furthermore, the Applicant submits letters from each of his parents' doctors, listing each of their multiple medical diagnoses and multiple medications and notes the assistance the Applicant provides in managing their health.

This new evidence on appeal is material as it directly relates to the Director's finding that the evidence the Applicant submitted was not sufficient to demonstrate the claimed extreme financial hardship to his father, specifically his father's monthly expenses and his potential for employment in the future which the Director identified as evidentiary deficiencies. As the Director has not had opportunity to review the new documents submitted on appeal, we will remand the matter to the Director to consider this evidence in the first instance in determining whether the Applicant has demonstrated extreme hardship to his qualifying relative and otherwise warrants a waiver of inadmissibility under section 212(i) of the Act as a matter of discretion.

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