



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

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

In Re: 23869955

Date: JAN. 11, 2023

Appeal of Lawrence, Massachusetts 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), for fraud or willful misrepresentation of a material fact.

The Director of the Lawrence, Massachusetts Field Office denied the application, concluding that the record did not establish that the Applicant's qualifying relative, his U.S. citizen spouse, would experience extreme hardship if the waiver were denied. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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. This ground of inadmissibility may be waived as a matter of discretion 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.

The Applicant does not dispute that he is inadmissible for fraud or misrepresentation. He entered the United States in 2003 using a passport issued in someone else's name. He seeks a waiver of this ground of inadmissibility. The issue on appeal is whether the Applicant has demonstrated that his only qualifying relatives, his U.S. citizen spouse, would experience extreme hardship upon denial of the waiver. An applicant may show extreme hardship if the qualifying relative remains in the United States separated from the applicant and if the qualifying relative relocates overseas with the applicant. See generally 9 USCIS Policy Manual B.4(B), <https://www.uscis.gov/policymanual> (providing, as guidance, the scenarios to consider in making extreme hardship determinations). Before the Director denied the application, the Applicant had not specified whether his spouse would remain in the United

States or relocate to Brazil with the Applicant. On appeal, the Applicant's spouse asserts that he would relocate with the Applicant. The Applicant contends that relocation would result in extreme financial and emotional hardship to his spouse.

The record does not show that the Director gave full consideration to the hardship factors claimed. Most significantly, the Applicant has submitted information from the U.S. Department of State and other sources about hate crimes in Brazil against gay individuals and uneven enforcement of laws against such crimes. The Applicant's spouse has indicated that he would live in fear if he accompanied the Applicant to Brazil in such a climate.

The Director acknowledged the submitted evidence, but dismissed it without sufficient discussion: "While it is noted [the Applicant's] spouse would experience a degree of difficulty making social adjustments if he were to relocate to Brazil, the evidence is insufficient to show [the spouse] would experience treatment that would rise [to] the level of extreme hardship."

Based on the record, which includes additional documentation submitted on appeal, we conclude that the Director did not sufficiently consider evidence of country conditions. The record describes discrimination, violence, and other human rights violations that substantially exceed "difficulty making social adjustments." Also, new evidence on appeal appears to be material to the extreme hardship claim. We will remand the matter to the Director for consideration of this new material.

At the same time, the Applicant's claims of financial hardship require further scrutiny and an opportunity for the Applicant to submit additional clarifying evidence. The Applicant's spouse has made what appear to be conflicting claims regarding his employment and income. For example, in an affidavit dated October 18, 2019, the Applicant's spouse stated: "I am currently not employed." But two days earlier, he signed Form I-864, Affidavit of Support, attesting that he was "self-employed" and earning an income of nearly \$60,000 per year. His 2019 income tax return indicates that he earned over \$30,000 in "property management" and reported over \$5,000 in taxable interest, suggesting a substantial cash reserve. The Applicant's spouse, currently 47 years old, asserts on appeal that he receives \$28,000 per year in "retirement earnings," but does not elaborate or provide supporting evidence.

Another discrepancy relating to financial information is the use of four different Social Security numbers on IRS Form W-2 Wage and Tax Statements issued to the Applicant since 2018 and reproduced Exhibit F of the appellate submission.

The record shows that, as of 2020, the Applicant and his spouse owned a three-bedroom house in [redacted] Connecticut, that they rented to a tenant for \$1900 per month. They also purchased a house in [redacted] Connecticut, shortly after the Director denied the waiver application. The existing record presents, at best, an incomplete picture of the Applicant's and his spouse's finances. Further evidence is necessary for the Director to come to an informed conclusion regarding the Applicant's claims of extreme financial hardship to his spouse. We will therefore remand the matter for consideration of the above issues.

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