



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

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

In Re: 24461895

Date: MAR. 7, 2023

Appeal of Seattle, Washington Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, who has requested to adjust status to that of a lawful permanent resident, seeks a waiver of inadmissibility for fraud or misrepresentation 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 this waiver as a matter of discretion if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Seattle, Washington Field Office, denied the waiver application, concluding that the record did not show extreme hardship to the Applicant's qualifying relatives in this case, her U.S. citizen spouse, and her lawful permanent resident (LPR) mother, if the Applicant is denied admission. On appeal, she submits a brief and maintains that her qualifying relatives would experience medical, emotional, and financial difficulties amounting to extreme hardship if she is refused admission.

The Applicant has the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. *See* 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 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, 8 U.S.C. § 1182(a)(6)(C)(i). This inadmissibility ground may be waived 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 establishes the requisite hardship, they must also show that their waiver request warrants a favorable exercise of discretion. *Id.*

Whether a 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). While some degree of hardship to qualifying relatives is present in most cases, the hardship must

exceed that which is usual or expected for it to be considered “extreme.” *See, e.g., 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).

An applicant may show extreme hardship (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. Establishing extreme hardship under both scenarios is not required if the evidence shows that one of these scenarios would result from the denial of the waiver. *See 9 USCIS Policy Manual B.4(B)*, <https://www.uscis.gov/legal-resources/policy-memoranda>. An applicant may submit evidence demonstrating which of the scenarios would result from a denial of admission and may establish extreme hardship to one or more qualifying relatives by showing that either relocation or separation would result in extreme hardship. 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. *Id.* Here, as the Director found, the record clearly indicates the U.S. citizen spouse intends to relocate to China with the Applicant and that the Applicant’s LPR mother would remain in the United States, if the waiver request is denied. The Applicant must therefore show that if she is denied admission, her spouse would experience extreme hardship upon relocation or that her mother upon separation from the Applicant.

II. ANALYSIS

The Applicant on appeal does not contest the Director’s determination of her inadmissibility under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, a finding supported by the record.¹ Instead, she asserts that she is eligible for a waiver of her inadmissibility pursuant to section 212(i) of the Act. The only issue before us is whether she has established extreme hardship to her qualifying relatives if the waiver request is denied.

The Director denied the waiver application, concluding that the record evidence did not establish extreme hardship to the Applicant’s U.S. citizen husband or her LPR mother. On appeal, she contends that the Director did not properly consider all the relevant evidence of hardship, including hardship to her spouse resulting from his longstanding and serious mental health issues. We conclude that, contrary to the Director’s determination, the record establishes by a preponderance of the evidence that the Applicant’s spouse will likely experience unusual difficulties that would cumulatively amount to extreme hardship, if he relocates to China with the Applicant.

The Applicant asserts that her spouse will experience extreme hardship if he relocates to China, in large part due to the spouse’s mental health conditions and related emotional difficulties that will be adversely impacted by relocation. The record reflects that the 36-year-old spouse is of Japanese ethnicity and was born and raised in [] where he lived with his parents most of his life and his

¹ The Applicant admits, and the record establishes, that during the Applicant’s nonimmigrant student visa application process in December 2010, she misrepresented that her mother was already living in China when in fact she was living in the United States because she feared that her application would be denied.

entire family and medical support network are located. He married the Applicant in [] 2016, and they currently reside with the spouse's parents. The record, including supporting statements and the spouse's medical documents, further shows that the spouse has been diagnosed with and receives treatment for his major depressive disorder and that he has struggled with anxiety and depression for a large part of his life. Sworn affidavits from the Applicant, her spouse, the spouse's parents, and his sister describe his serious and years long mental health struggles since he was a teenager and indicate that he had been a gifted child who excelled as a student but dropped out of high school due to depression. The spouse and his parents indicate that after dropping out of school, he fell into a serious depression lasting for seven years through 2015, during which time he rarely came out of his room or communicated with them and was not employed for a significant period of time. He explained that his parents were his only source of socialization as he struggled to do basic tasks like eating, showering, and cleaning his room. A February 2019 medical visit summary also reflects that he reported struggling with untreated depression since he was a teenager, and as a result, did not finish high school. This document confirms the spouse was diagnosed with moderate episode of recurrent major depressive disorder and states that his symptoms "are having significant impact" on his family and marriage, as well as his occupation and social functioning, and that his symptoms were getting worse the preceding six to nine months. A July 2021 letter from a [] healthcare provider likewise notes that he "has struggled with depression and anxiety for many years" and that he "has worked with a therapist and psychiatrist consistently since around 2014 or 2015, seeking therapy and medication treatment for [depression and anxiety]." This letter also confirms that prior to treatment, the spouse's symptoms included suicidal thoughts and that the Applicant's presence in his life "dramatically improved his conditions." Moreover, the July 2021 letter, along with other medical documentation in the record, reflects that the spouse is seeing a therapist and working with professionals to maintain his medication, but notes that while the medicine is helping, stress still affects him despite treatment and his medication doses were increased due to stress related to the Applicant's immigration issues. The record thus shows that his mental health conditions impact his day-to-day life and that he is currently receiving treatment that he needs to maintain his mental health.

The Applicant further asserts that moving to China will severely disrupt the progress that her spouse has been making as a result of treatment and in turn adversely impact his mental health stability as well as their marital stability. She maintains that his mental health would be negatively affected by multiple factors upon relocation, including separation from his close family and support network here, language and cultural barriers, and existence of hostility against individuals like the spouse who are of Japanese ethnicity. The spouse avers that he speaks no Mandarin and lacks cultural familiarity, which would significantly inhibit his efforts to continue treatment for his mental health conditions and seek employment. The July 2021 letter from the spouse's healthcare provider further confirms that while his relationship with the Applicant is critical to his mental health, leaving the spouse's local community and support network would be "very triggering" for his depression and anxiety, and thus not recommended. The Applicant further explains that if she is denied admission, she and her spouse are likely to return to [] because although it is not a common place for foreigners, it is her birthplace and her father, her only family in China, resides there. The Applicant also explains that her father is a low-income factory worker in a remote area, and that although she speaks with her father by phone, they are not close. She also asserts that that she has not been to China since she left in 2010.

The record also contains evidence, including country conditions reports, supporting the Applicant's claim that her spouse would have limited access to mental health care and services he needs in China

and that such access would be further complicated by his language and cultural barriers. At the time the waiver application was filed, U.S. Department of State (DOS) designated China as a “Level 4 [Do not travel]” country, strongly warning against traveling to China. *See* 9 USCIS Policy Manual B.5(E)(4), <https://www.uscis.gov/policy-manual> (providing that DOS travel warnings “would often weigh heavily in support of a finding of extreme hardship” to a qualifying relative who would relocate to a country that is subject to the warnings and stating that adjudicators “should give weight to DOS travel warnings, taking into account the nature and severity of such warnings”). Although the Director correctly noted that DOS has since downgraded China to “Level 3,” the current advisory still urges individuals to reconsider traveling to China due to “serious risks to safety and security,” in part due to the surge in COVID-19 cases and arbitrary enforcement of local laws. *See* U.S. Department of State, China Travel Advisory, <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/China.html> (last visited March 7, 2022). The current DOS travel advisory also reflects Level 3 risk indicators for China, including explicit warnings that “[a]ccess to medical care, including treatment in hospitals and ambulance service, may be delayed or limited,” and advises U.S. citizens in particular to exercise increased caution due to wrongful detentions of U.S. citizens. The Applicant also points out on appeal that the record contains additional country conditions evidence, such as the DOS’s Country Reports on China, supporting these warnings.

Further, the evidence shows that the spouse is very close with his parents and has resided with them for over 30 years, and that the Applicant and the spouse currently live with his parents who are now respectively 70 and 73 years of age with various documented medical conditions, which place them at a higher risk of severe COVID-19. The affidavits also indicate that living together makes it easier for them to care for the spouse’s parents in their daily activities, and that the spouse’s sister is unable to provide similar assistance. The record also indicates that the spouse’s parents would have trouble traveling to and from China, and the current DOS warnings consistently indicate travel restrictions. Finally, the record reflects that the spouse may experience additional emotional hardship impacting his mental health due to the Applicant’s 2021 diagnosis for Neuromyelitis Optica (NMO), an autoimmune disease with a risk of serious complications, including blindness, paralysis, and other serious neurological disability. A medical doctor’s letter confirms the Applicant’s hospitalization and diagnosis for NMO, which has no cure and requires lifelong treatment.

Upon de novo review, the overall record evidence therefore establishes that the hardship considerations presented on this record, including the spouse’s medical, emotional, and economic hardship, cumulatively go beyond the usual and expected results of relocation if the waiver application is denied. Accordingly, we will withdraw the Director’s conclusion to the contrary and return the matter for the Director to determine whether the Applicant’s waiver request warrants a favorable exercise of discretion.²

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

² As the Applicant has established extreme hardship to her U.S. citizen spouse, we need not determine whether she has also established extreme hardship to her LPR mother, the other qualifying relative.