



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

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

In Re: 27523980

Date: SEP. 9, 2023

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of Mexico currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be “admissible” or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i).

The Director of the Los Angeles, California Field Office denied the application, concluding that the record did not establish that the Applicant warranted a favorable exercise of discretion. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant argues that denial of the waiver was an abuse of discretion by the Director as the positive equities outweigh the negative.

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 sustain the appeal.

## **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). Section 204(l) of the Act, 8 U.S.C. § 1154(l), provides that an applicant who immediately prior to the death of a qualifying relative was the beneficiary of a pending or approved petition for classification as an immediate relative, who resided in the United States at the time of the death of the qualifying relative, and who continues to reside in the United States shall have their application for adjustment of status based upon a family relationship, and any related applications, adjudicated notwithstanding the death of the qualifying relative, unless a discretionary determination is made that approval would not be in the public interest.

If the noncitizen demonstrates the existence of the required extreme hardship, then they 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-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing an 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 noncitizen and their 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 citizen and national of Mexico, entered the United States without inspection sometime in 1990. He married J-J,<sup>1</sup> a U.S. citizen, in [ ] 2007. He applied to adjust status to that of lawful permanent resident in July 2016 based on his relationship with his U.S. citizen spouse. The Director denied the application after determining that the Applicant was inadmissible for filing frivolous immigration benefits in order to obtain work authorization and advance parole in 2011. In October 2018, the Applicant again filed for adjustment of status and the current application for a waiver of inadmissibility. The Applicant claimed two qualifying relatives, his U.S. citizen spouse and LPR mother. The Director denied the waiver application stating that the Applicant had not established extreme hardship to his qualifying relatives. The Applicant appealed the decision arguing that he was not inadmissible because his misrepresentation was not willful and in January 2022, we dismissed the appeal. However, the Applicant's spouse died in December of 2020 and the Applicant requested, on motion, that his application be processed under section 204(I) of the Act. We approved the motion and remanded the case to the Director for a determination of whether the Applicant merited a favorable exercise of discretion. The Director determined that the Applicant did not merit a favorable exercise of discretion because the immigration violations he committed outweighed the positive equities of having been married to a U.S. citizen and lacking a criminal record.

On appeal, the Applicant re-states his argument regarding inadmissibility and asserts that the Director's decision did not properly weigh the positive equities in his favor and that denial is an abuse of the Director's discretion. With the current appeal, the Applicant submits copies of all previous agency decisions related to his request for a waiver of inadmissibility, a brief in support of this appeal, copies of all prior briefs from this application, records of sworn statements regarding the Applicant's inadmissibility, and information related to "notario" fraud.

Upon de novo review, we determine that the Director did not properly consider all the relevant positive equities of the Applicant prior to making their discretionary determination. We have already reviewed the Applicant's claims regarding inadmissibility and determined in our first appeal decision that the

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<sup>1</sup> We use initials to protect the privacy of individuals.

Applicant is inadmissible. We will not re-adjudicate the issue, and we incorporate our prior determination of inadmissibility here, by reference.

After establishing extreme hardship, the Applicant must show that he warrants a waiver in the exercise of discretion. As noted above, USCIS must balance the positive and negative equities present in the record to establish if the Applicant should be granted relief. *See Matter of Marin*, 16 I&N Dec. 581, 585 (BIA 1978); *Matter of Buscemi*, 19 I&N Dec. 628, 633 (BIA 1988); *Matter of Edwards*, 20 I&N Dec. 191, 195 (BIA 1990); *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). In the present case the Applicant's negative equities are his inadmissibility and illegal entry into the United States. On appeal, the Applicant asserts that his inadmissibility did not arise from a nefarious scheme to defraud the government but from a "notario" who took advantage of him while he sought legal advice. The Applicant's testimony during his interviews with USCIS is consistent with his claims on appeal. When considering how to balance the inadmissibility of the applicant as a negative factor we must evaluate the underlying circumstances to determine whether the inadmissibility is indicative of the Applicant's character. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). While the Applicant remains responsible for any misrepresentation he made to obtain work authorization and parole, we recognize that those actions were in part due to the advice of another bad actor. This circumstance, as well as the fact that the record lacks any indication that the Applicant has transgressed criminal laws, undermines the Director's assessment that the Applicant's actions show a complete lack of regard for the laws of the United States.

The Applicant's positive equities include family ties to the United States, including three LPR brothers and his elderly LPR mother, a history of gainful employment, payment of taxes, his long residence in the United States of approximately 33 years, absence of a criminal record and the humanitarian considerations regarding the death of his U.S. citizen spouse. In addition to the above noted factors, the record indicates that the Applicant and his spouse were foster parents to their nephew. In his letter of support filed with the waiver application, the Applicant's nephew provided insight into how the Applicant had benefited his life for the better by providing a stable and loving home. The Applicant has also indicated that he, along with his family members, provides care and support to his aging LPR mother. While not rising to the level of extreme, the record does demonstrate that the Applicant's mother would experience emotional hardship if the Applicant was denied admission to the United States. The Applicant also provided the Director with letters of support from friends in the community who have known him for extended periods of time. Each of the affiants attest to the Applicant's moral character and dedication to his work and family. Considering the numerous positive factors in his favor, we find that the Applicant's positive equities outweigh the negative factors in this case and that he warrants a favorable exercise of discretion. As all other eligibility requirements for the requested waiver of inadmissibility have been satisfied, we will withdraw the Director's decision and sustain the appeal.

**ORDER:** The appeal is sustained.