



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

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

In Re: 27392492

Date: SEP, 14, 2023

Appeal of Long Island, New York Field Office Decision

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

The Applicant, a native and citizen of Peru 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). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Long Island, New York Field Office denied the application, concluding that the record did not establish that the Applicant’s spouse would experience extreme hardship if she were denied admission. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant asserts that she has provided sufficient evidence of extreme hardship and submits new evidence regarding changes in circumstance since the waiver was filed in 2019.

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. USCIS may grant a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or LPR 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 that USCIS should favorably exercise its discretion and grant the waiver. *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).

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. *See 9 USCIS Policy Manual B.4(B)*, <https://www.uscis.gov/policymanual>. Demonstrating extreme hardship under both of these scenarios is not required if the applicant’s evidence demonstrates that one of these scenarios would result from the denial of the waiver. *See id.* 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. *See id.* Here, neither the Applicant or his spouse make a definitive statement regarding whether they intend to separate or relocate together to Peru. Instead, the Applicant and her spouse argue that extreme hardship exists both upon separation and relocation. As a result, the Applicant must establish that her U.S. citizen spouse would experience extreme hardship both upon separation and relocation.

The Applicant does not contest her inadmissibility on appeal and we incorporate the Director’s inadmissibility finding here, by reference.<sup>1</sup> The Applicant is a citizen and national of Peru who married F-C-, a naturalized U.S. citizen, in 2018. The Applicant and F-C- have two U.S. citizen children. The Applicant applied for adjustment of status in November 2019 with the current request for a waiver of inadmissibility. The Applicant claimed that her spouse would experience extreme economic, emotional, and medical hardship both upon separation and relocation to Peru. As evidence to support this claim, she provided tax documents, pay stubs, bills, mortgage statements, a breakdown of monthly expenses, a personal statement, a personal statement from her spouse, medical records for both children, country conditions materials, and a psychological assessment of her spouse. The Director determined that the Applicant had not established extreme hardship to her spouse stating that the Applicant “did not provide any evidence that would substantiate your claims” and denied the Application in March 2021.

On appeal, the Applicant states that circumstances have changed since the filing of her waiver application including the start of the Covid-19 pandemic, changes in economic circumstances and in the medical care required for their children. The Applicant also states that the Director summarily dismissed evidence that should have been considered in support of her claims of extreme hardship to her spouse. In particular, the Applicant states that the Director called into question the credibility of the psychological evaluation based on a lack of evidence of continuing care and when the assessment was completed. The Applicant re-iterates the qualifications of the medical professional who completed the psychological evaluation and provides an additional, updated psychological assessment

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<sup>1</sup> The Applicant obtained a passport in Peru with a modified name and date of birth in order to claim to be the daughter of her sister. She used the modified passport to obtain a visitor visa and presented it at the port of entry to gain admission to the United States.

on appeal. Due to the Director's statement summarily dismissing the Applicant's claims of extreme hardship based on a lack of supporting evidence, we conclude that the Director did not meaningfully review the extreme hardship claims of the Applicant or provide a full explanation of why the evidence was insufficient.

When denying a petition, the Director must fully explain the reasons for denial to allow the Petitioner a fair opportunity to contest the decision and provide us an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). The regulation at 8 C.F.R. § 103.3(a)(1)(i) states that when denying an application, the Director shall explain in writing the specific reasons for denial.

In addition, the Applicant has provided additional evidence of extreme hardship on appeal that the Director has not had the opportunity to review. This evidence includes updated personal statements, an updated psychological assessment of the Applicant's spouse indicating a worsening of his anxiety and depressive symptoms, evidence related to the special educational needs of the Applicant's son, evidence related to changes in economic circumstances due to the Applicant's eldest daughter beginning college, and updated information related to conditions in Lima, Peru.

Since the Director has not had the opportunity to review the new evidence submitted on appeal, we will remand the matter to the Director to consider this evidence in the first instance and issue a new decision that explains the basis of the Director's determination and further evaluates whether the Applicant has established extreme hardship to her U.S. citizen spouse.

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