



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 26953554

Date: Sept. 18, 2023

Appeal of Boston, Massachusetts Field Office Decision

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

The Applicant, a citizen of the Dominican Republic, 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 committing fraud when obtaining a nonimmigrant visa. 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 Boston, Massachusetts Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the record did not establish that refusal of admission would result in extreme hardship to the Applicant's only qualifying relative, his U.S. citizen spouse. 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, which, if adverse, shall be certified to us for review.

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). USCIS may waive this inadmissibility 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).

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> (providing guidance on the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both 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.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002)). 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.* In the present case, the record contains a clear statement from the Applicant’s spouse indicating he intends to relocate to the Dominican Republic if the Applicant’s waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship upon relocation.

If the noncitizen demonstrates the requisite 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 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).

Finally, we have held that, “truth is to be determined not by the quantity of evidence alone but by its quality.” *Matter of Chawathe*, 25 I&N Dec. at 376. That decision explains that, pursuant to the preponderance of the evidence standard, we “must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Id.*

II. ANALYSIS

The Applicant does not contest the finding of inadmissibility for misrepresentation of material facts, which is established in the record. The relevant issue on appeal is whether the Applicant has established extreme hardship to his spouse, as required to qualify for a waiver of inadmissibility under section 212(i) of the Act and, if so, whether he merits the waiver as a matter of discretion.

In support of his waiver request, the Applicant submitted his own and his spouse’s letters describing emotional, psychological, and financial hardship the Applicant’s spouse would suffer upon relocation

to the Dominican Republic, corroborating documentation of financial hardship, letters of support, and documents related to the fraud or misrepresentation. The Applicant's spouse's 2021 statement describes the extent of his love and dependence on the Applicant who he states is the love of his life. He describes his fear of living as a married gay couple in the Dominican Republic due to discrimination in employment and health centers and violence. He states he would have to hide his sexual preference due to bullying and violence directed at gay men. He also states he would suffer extreme financial hardship because he and the Applicant split household expenses evenly and, therefore, he could not afford to support himself without his husband's income. The Applicant also submitted country conditions documentation supporting a high level of general crime, violence, and poverty, together with documentation of crimes and discrimination in the Dominican Republic directed at gay persons, such as the Applicant and his husband, on account of sexual orientation.

The Director denied the application, concluding that the Applicant did not submit sufficient evidence to establish that his spouse would suffer extreme hardship. Noting that the Applicant's husband would relocate to the Dominican Republic if the waiver application were denied, the Director stated:

In summary, your spouse details your relationship, your character, and the hardships he would face if your waiver were not approved.

In support of these hardship, various documents were submitted outlining the living conditions, hardships and challenges that would be encountered in the Dominican Republic.

In denying the waiver application, the Director stated that the Applicant's spouse's claimed hardships were not supported by "any other corroborative evidence." The Director described the Applicant's fraud or misrepresentation at length and the Applicant's lack of remorse because the Applicant characterized himself as a victim of the entity that purportedly was sponsoring the Applicant's visit to the United States, concluding that the Applicant lacked credibility. Hence, the Director not only denied the waiver application on account of the Applicant's failure to meet his burden to show extreme hardship on his spouse, but also denied the waiver application as a matter of discretion.

On appeal, the Applicant submits a brief, updated May 2021 statements from the Applicant and his husband, and updated financial hardship information including a budget, and he resubmits documents connected to his fraud or misrepresentation. Next, the Applicant provides a translated May 2021 letter from a lawyer in the Dominican Republic corroborating that [redacted] foundation is the subject of ongoing criminal proceedings in the Dominican Republic for fraud involving young people and that the Applicant was among the victims of [redacted] scam. The Applicant provides a purported press release about the litigation. The Applicant also submits the 2020 U.S. Department of State Country Report on Human Practices: Dominican Republic (DOS Country Report), which was current at the time he filed his appeal.

With respect to whether the Applicant met his burden of establishing extreme hardship on his husband, the Director's decision does not reflect that they considered all presented hardship factors in the aggregate. For example, the decision does not reflect that the Director considered evidence presented on the particular challenges of LGBTQI+ individuals in the Dominican Republic, and the impact such conditions would have on the Applicant's spouse should he reside there. The Applicant and his husband's statements both note that the Applicant's husband would relocate to the Dominican

Republic and will have to suppress his sexual orientation in public. Sexual orientation is a characteristic that an individual cannot change about him or herself or should not be required to change. *Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822-23 (BIA 1990). Thus, it is a relevant factor for the Director to consider on remand. The presented materials documented discrimination in employment and medical care together with violence directed at gay persons on account of their sexual orientation. On appeal, the Applicant also points out that gay marriage is not legal in the Dominican Republic. We take administrative notice of the 2022 DOS Country Report,¹ <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/dominican-republic>, which has a more detailed section than the 2020 DOS Country Report, called “Acts of Violence, Criminalization, and other Abuses based on Sexual Orientation, Gender Identity or Expression, or Sex Characteristics” describing treatment of members of the lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) community. The 2022 DOS Country Report discusses violence, threats, and “widespread discrimination” against LGBTQI+ persons.

Because the record does not indicate that the Director considered the Applicant’s and his husband’s sexual orientation as well as country conditions as they pertain to married gay individuals in the Dominican Republic, we will return the matter to the Director for consideration of these and any other factors the Director deems pertinent to extreme hardship. We reserve the issue of whether the Director’s discretionary finding was in error.² See *I.N.S. v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.”). If the Director finds that the Applicant’s husband will suffer extreme hardship upon relocation, then the Director should redetermine whether the Applicant warrants a waiver in the exercise of discretion in the totality of the circumstances.

III. CONCLUSION

The Director did not consider the Petitioner's eligibility relating to the Applicant’s spouse’s sexual orientation and country conditions for gay married persons in the Dominican Republic. As such, we will remand the matter for further consideration of the record, including claims and documentation submitted on appeal, and entry of a new decision.³

¹ See *Matter of R-R*, 20 I&N Dec. 547, 551 (BIA 1992) (“It is well established that administrative agencies and the court may take judicial (or administrative) notice of commonly known facts”) (citation omitted).

² On appeal, the Applicant argues that the Director placed “undue weight” on the fraud and misrepresentation in their discretionary denial, citing *Matter of Alonzo*, 17 I&N Dec. 292 (Comm 1979) (initial fraud or misrepresentation was not held as an adverse factor in discretion because it was that initial fraud or misrepresentation for which the alien seeks to be forgiven). However, the United States Supreme Court ruled in *INS v. Yueh-Shaio Yang*, 519 U.S. 26 (1996), that the Attorney General has the authority to consider any and all negative factors, including the respondent's initial fraud, in deciding whether or not to grant a waiver under section 241(a)(1)(H) of the Act. Therefore, as more thoroughly articulated in *Matter of Tijam*, 22 I&N Dec. 408, 414-417 (BIA 1998), the Supreme Court has undercut the rationale of *Matter of Alonzo*, *supra*. For this reason, as well as those stated in *Matter of Tijam*, *supra*, we find that the Director properly considered the Applicant's underlying fraud as an adverse factor in their discretionary analysis denying the Applicant a waiver under section 212(i) of the Act as a matter of discretion.

³ We have the authority to withdraw a decision and remand the case for further action, with an order that it be certified back to us if the new decision is adverse to the affected party. USCIS Policy Memorandum PM-602-0087, Certification of Decisions to the Administrative Appeals Office (AAO) 4 (July 2,

ORDER: The decision of the Director, Boston, Massachusetts Field Office, is withdrawn. The matter is remanded to the Director, Boston, Massachusetts Field Office, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

2013), <https://www.uscis.gov/sites/default/files/document/memos/Certification%20of%20Decisions%20.pdf> (visited August 3, 2023), Adjudicator's Field Manual 3.5(c), 10.18(a)(3). This order is not meant to compel approval of the remanded case but is designed to preserve the affected party's ability to seek appellate review without payment of a second appeal fee. *Id.*