



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

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

In Re: 18001931

Date: FEB. 14, 2022

Appeal of Mount Laurel, New Jersey 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 (LPR) and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The Director of the Mount Laurel, New Jersey Field Office denied the application, concluding that the record did not establish that the Applicant's United States citizen spouse, the only qualifying relative, would experience extreme hardship if the waiver was not granted. We subsequently withdrew the Director's decision finding the Applicant had established his qualifying relative would experience extreme hardship but remanded the case for consideration of discretionary factors. The Director then denied the application, concluding the totality of the evidence "in this case weighs against a positive discretionary finding."

On appeal, the Applicant does not contest the finding of inadmissibility, a finding supported by the record.¹ He contends that his spouse will continue to experience extreme hardship and that he warrants a positive discretionary finding. He submits hardship evidence in support of these claims as well as additional evidence of positive discretionary factors.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will 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). There is a discretionary waiver of 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.

¹ The Applicant, a citizen of China, admits to presenting a fraudulent Taiwanese passport at a U.S. port of entry in February 1993 when he was 17 years old.

In determining whether a waiver should be granted as a matter of discretion, we must balance the adverse factors evidencing the 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. *Matter of Mendez-Morales, supra*, 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 his or her 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 issue on appeal is whether the Applicant waiver should be granted as a matter of discretion. Upon review of the evidence in the record, including the evidence submitted on appeal, we find a favorable exercise of discretion is warranted in this case.

Regarding the Applicant's positive discretionary factors, the record indicates his spouse would experience extreme hardship should his waiver be denied and the Applicant expressed remorse for the misrepresentation leading to his inadmissibility. Additional positive factors include the Applicant's community ties, payment of taxes, business ownership and gainful employment, letters of support, as well as residence of long duration in the United States beginning when he was 17 years old.

The Director indicated several adverse factors regarding the Applicant's immigration history and criminal record since arriving in the United States. The Director found that the Applicant's statements to immigration officers at a U.S. port of entry in 1993 claiming he had never been arrested were inconsistent with his application for asylum where the Applicant claimed he had been arrested and detained in China. The Applicant's claims for asylum were found not credible by an immigration judge as well as the Board of Immigration Appeals (the Board).² The Director determined that these three credibility determinations indicated that "it is more likely than not that [the Applicant's] asylum application was fabricated in order to enable [him] to remain in the U.S."

The Director also found the Applicant had ignored his order of exclusion in 2000 by living and working in the U.S. in defiance of this order. The Applicant was also arrested for resisting arrest/eluding police with use or threat of force and disorderly conduct in [redacted] 2012 but later pled guilty to local ordinance violations in [redacted] 2013. The Director noted the Applicant had not submitted the actual police reports, as required, which prevented a review of the Applicant's alleged criminal records. Finally, the Director indicated the Applicant failed to learn English after 27 years of residence in the United States which factored against the Applicant's claims of community ties in the United States. The Director determined that the Applicant's positive family and community factors had

² The Director claimed an asylum officer also found the Applicant's asylum claim to be not credible but there is no evidence in the record indicating an asylum officer reviewed the Applicant's claim.

diminished weight since they came into existence after the Applicant received an order of exclusion and found a favorable exercise of discretion was not warranted in this case.

On appeal, the Applicant submitted additional evidence such as police reports from his arrest, records from his exclusion proceedings, and updated letters of support. The Applicant argues the Director erred in giving the unique equities in his case diminished or no weight in making her discretionary determination and contends the totality of the circumstances in this case indicate a positive exercise of discretion is warranted. Regarding the Applicant's asylum claim, he acknowledges the immigration judge and the Board found his asylum claims not credible but he had never been interviewed by an asylum officer as claimed in the Director's decision. The Applicant also included evidence that the asylum credibility finding was based on two discrepancies made while he was represented by a Board accredited representative who the Board later found had so significant a record of inadequate representation that the representative's application to renew accreditation was denied.³ Additionally, the Applicant notes that neither the immigration judge nor the Board made a finding that his asylum claim was "frivolous" which, unlike an adverse credibility determination, requires explicit findings as to "materiality" and "deliberate fabrication" and the record does not support the Director's determination that his asylum claim was fabricated or fraudulent.⁴

The Applicant also indicates he was involved in a tragic car accident in 2003 that left him in a coma for a month and left him with long-term pain, memory issues, and slowed speech. The Applicant claims on appeal that he was arrested in 2012 after being pulled over by police because he spoke in a loud voice and, out of frustration with language issues as well as the lasting conditions from his accident, attempted to use physical gestures to communicate with the police. He was arrested for resisting arrest and disorderly conduct but was able to use a Mandarin interpreter at the police station to explain his prior accident and behavior leading up to his arrest. The record includes the Applicant's police report which notes language and communication issues when the Applicant was pulled over and also notes the Applicant's prior car accident. Ultimately, the Applicant pled guilty to breach of peace and unsafe operation, both punished by a fine. On appeal, the Applicant accepts responsibility for creating the misunderstanding that led up to his arrest.

Lastly, the Applicant claims his inability to learn English during his long-term residency in the United States is also related to the lasting effects of his car accident. On appeal, the Applicant submits a statement expressing regret for not being more fluent in English but noted that he was "focused on supporting my US citizen wife, so I just worked in jobs where only hard work matters, not English language skills. And after my 2003 accident, it became harder to improve my English because of my memory becomes foggy and my speech slowed down."

³ Federal regulations restrict which non-attorneys can represent aliens in immigration matters before the Executive Office for Immigration Review (EOIR), which includes this Board and the immigration courts, and the Department of Homeland Security (DHS). See 8 C.F.R. § 1292.1.

⁴ A frivolous asylum determination requires (1) notice to the alien of the consequences of filing a frivolous application; (2) a specific finding by the immigration judge or the Board that the alien knowingly filed a frivolous application; (3) sufficient evidence in the record to support the finding that a material element of the asylum application was deliberately fabricated; and (4) an indication that the alien has been afforded sufficient opportunity to account for any discrepancies or implausible aspects of the claim. *Matter of Y-L-*, 24 I&N Dec. 151, 155 (BIA 2007). Unlike an adverse credibility determination, a frivolousness determination requires explicit findings as to materiality and deliberate fabrication so an immigration judge must assess an alien's explanations for inconsistencies or discrepancies separately. *Matter of B-Y-*, 25 I&N Dec. 236, 240 (BIA 2010).

We find that the Applicant's long-term residency since he was 17, his community and business ties, and his spouse's extreme hardship are of particular significance and outweigh the unfavorable factors in the Applicant's case. While the Applicant has had immigration violations and an adverse credibility finding from his application for asylum, these do not appear so significant as to outweigh the positive factors in this case. Additionally, the Applicant explained his behavior that led to his arrest and provided documentation to show that the charges were lowered to municipal fines. Further, the Applicant has expressed remorse for the circumstances leading to his arrest as well as for providing a false passport when he was 17. Thus, the balancing of the positive equities in this case against the negative factors warrants a favorable exercise of discretion. Accordingly, we withdraw the Director's decision, as the waiver application merits approval.

ORDER: The appeal is sustained.