



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

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

In Re: 15239142

Date: FEB. 15, 2022

Appeal of Minneapolis-St. Paul, Minnesota 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), for fraud or misrepresentation. The Director of the Minneapolis-St. Paul, Minnesota Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's qualifying relative, his U.S. citizen spouse, would experience extreme hardship if he were denied the waiver. On appeal, the Applicant submits additional evidence and contends that his spouse would experience extreme hardship if his waiver were denied.

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 review, we will return the matter to the Director for the entry of a new decision.

I. LAW

Any foreign national 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. 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 foreign national. Section 212(i) of the Act.

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). In these proceedings, it is the applicant's burden to establish by

a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Director determined that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act because he sought admission to the United States in January 1992 by using a photo-substituted travel document belonging to another individual. The Applicant does not contest this determination, and it is supported by the record. The issue on appeal is whether the Applicant has established that his U.S. citizen spouse would experience extreme hardship if the inadmissibility is not waived, and if so, whether he merits a waiver as a matter of discretion.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case his U.S. citizen spouse. Section 212(i) of the Act. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relatives remain in the United States separated from the applicant and 2) if the qualifying relatives relocate overseas with the applicant. *See 9 USCIS Policy Manual B.4(B)*, <https://www.uscis.gov/policymanual> (providing, as guidance, the scenarios to consider in making extreme hardship determinations). 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.* (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 includes statements from the Applicant's spouse indicating she intends to remain in the United States 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 separation.

The record reflects that the Applicant and his spouse have been married since 2016. They currently reside together along with their daughter 12-year-old daughter. In support of his waiver request, the Applicant initially submitted an affidavit from his spouse; a letter from his daughter discussing their family's hardships; medical records for himself, his spouse, and their daughter; family photographs; information on Liberia; letters of support from the Applicant's brother, church pastors, a former work colleague, and a neighbor; and job verification letters relating to his previous employment.

In denying the waiver application, the Director acknowledged that the Applicant's spouse has various medical conditions including an umbilical hernia and right tympanic membrane rupture, but determined that the evidence did not establish that her ongoing medical conditions were debilitating. With respect to financial hardship, the Director indicated that while the Applicant helped his spouse cover household expenses, he had not demonstrated that the hardship resulting from the loss of his income rises to the level of extreme. The Director concluded that the Applicant did not establish that his spouse would suffer hardship beyond the common consequences of separation or relocation. In addition, the Director pointed to the Applicant's criminal record as an adverse factor in determining that he did not merit a waiver as a matter of discretion.

With the appeal, the Applicant submits an updated hardship statement from his spouse; a clinical evaluation of his spouse from the Center for Victims of Torture discussing the emotional, financial, and psychological impact of their possible separation; pay statements for his spouse; bills for their rent, insurance, and utilities; credit card statements showing multiple balances owed by the Applicant's spouse; and a Social Security statement showing the Applicant's earnings history. The Applicant also provides additional medical records for himself and his spouse, letters of support from family and friends, further information about country conditions in Liberia, and court disposition documentation relating to some of his criminal charges.¹

The Applicant's spouse reiterates that she and her husband met in 2006, moved to Minnesota in 2007, and have lived together since that time. She indicates that they have a child together, that the Applicant has been "an extremely important part" of their daily lives, that she depends on him emotionally, and that they "had never been separated from him for even a day" until he was taken into custody in 2018. The Applicant's spouse explains that prior to her husband's incarceration, he worked as a custodian while she served as a stocker in retail. She notes that they worked different shifts to ensure that one of them could care for their daughter while the other was working. As a result of the Applicant's incarceration, she asserts that she became the "primary income earner and sole parent" and that she has no one to help out with caring for their daughter. She further states that she no longer has "money to afford gas to drive to work. Sometimes my daughter and I don't have anything to eat because I don't have any money." The Applicant's spouse points out that she has accumulated thousands of dollars in credit card debt, that her income decreased during the COVID-19 pandemic, and that her income falls short in meeting their monthly household expenses. In addition, she indicates that her daughter suffers from panic attacks and insomnia related to their family's situation. The Applicant's spouse concludes that his removal "would be devastating to everyone," affects her "ability to earn income," disrupts their family ties, "hinders [their daughter's] social and emotional growth, and would be an extraordinary hardship for all of us."

The clinical evaluation for the Applicant's spouse provided on appeal reported symptoms of depressed mood, lack of energy, fatigue, loss of interest in significant activities, feeling "she did not want to be alive," and "significant worry." The clinician concludes the Applicant's spouse "would face significant financial and psychosocial hardship should her husband be removed from the United States."

Because the record does not indicate that the Director has reviewed the additional evidence relating to the Applicant's spouse's financial and psychological hardships and the disposition documentation relating to all of his criminal charges before forwarding the appeal to our office, we will return the matter to the Director to consider the new claims and evidence. The Director should determine whether extreme hardship to the Applicant's U.S. citizen spouse has been established and if so, whether a waiver is warranted as a matter of discretion in light of his criminal history.

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

¹ The record does not include the court disposition relating to the Applicant's [REDACTED] 2018 arrest in Minnesota for "Criminal Sexual Conduct – First Degree Penetration."