U.S. Citizenship and Immigration Services

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

In Re: 20417254

Date: JUNE 13, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for misrepresenting a material fact. 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 Nebraska Service Center Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility. The Director concluded the Applicant did not establish extreme hardship to their U.S. citizen parent, his only qualifying relative, as required to demonstrate eligibility for the discretionary waiver. On appeal, the Applicant submits a brief asserting their eligibility. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 dismiss the appeal.

## I. LAW

A 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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility ground if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the foreign national. Section 212(i). If the foreign national 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).

Once the foreign national demonstrates the requisite extreme hardship, they must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i). The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N 296, 299 (BIA 1996). However, if an applicant does not demonstrate extreme hardship to a qualifying relative, it is unnecessary that USCIS perform a discretionary analysis.

## II. ANALYSIS

### A. Background

The Applicant is a native and citizen of the West African country of The Gambia. His mother (N-F-) filed a Form I-130, Petition for Alien Relative, classifying him as the son of a lawful permanent resident, and it was approved in 2015.[1] N-F- is now a U.S. citizen after naturalizing in 2021. After attending an interview with the U.S. Embassy in Dakar, Senegal, the consular officer determined that the Applicant submitted birth records to establish his identity that were not valid. A paternal relationship was confirmed through DNA testing; however, the Applicant was unable to establish his identity. As a result, the Director denied his waiver application for misrepresenting a material fact while seeking to procure a benefit under the Act. Section 212(a)(6)(C)(i). The Director acknowledged the Applicant's evidence, N-F-'s medical (diabetes) and mental conditions (depression), and her claims relating to the effects on her daily life. The Director determined that the Applicant did not offer evidence to corroborate N-F-'s claims hardship on her daily life. They further concluded that the adverse effects of denying him admission to the United States was a hardship, but it did not rise to the level of extreme hardship.

Within the appeal, the Applicant contests that the inadmissibility ground applies to him. He states that in 2007, a fire at his foreign residence destroyed his identity documents and his father obtained new documentation and it was those materials that he submitted to the Embassy in 2017. The Applicant explains that he did not knowingly present fraudulent identity documents and that he believed those materials to be genuine. He further claims that the Director erred in multiple matters, culminating in him contesting the determination that he did not establish that the refusal of his admission would result in extreme hardship to his qualifying relative.

### B. Inadmissibility under Section 212(a)(6)(C)(i)

We agree with the Director's conclusion that the Applicant made a willful misrepresentation of a material fact seeking a benefit under the Act. Applicants bear the burden of establishing admissibility clearly and beyond doubt. *See Matter of Bett*, 26 I&N Dec. 437, 440 (BIA 2014) (concluding "an applicant has the burden to show that he is clearly and beyond doubt entitled to be admitted to the

[1] We use initials to protect the privacy of individuals.

United States and is not inadmissible under section 212(a) of the Act.") (citations omitted). Here, the Applicant presented documents that were not valid to the Embassy to establish his identity.

The Applicant stated within an affidavit that he was unaware the documents were not genuine, and he offers statements from others confirming the 2007 fire at his foreign residence. We note that the Applicant does not present extenuating circumstances, which might keep him from realizing the documents were not valid. There was approximately a one-decade gap between the fire he indicates destroyed his documents and the immigrant visa interview. He also does not offer any legal interpretations that might persuade us to decide in his favor. A foreign national's signature on an immigration application establishes a strong presumption they know of and have assented to the contents of the application—to include the supporting documents—but they can rebut such a presumption by establishing fraud, deceit, or other wrongful acts by another person. *Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018) (citing *Thompson v. Lynch*, 788 F.3d 638, 647 (6th Cir. 2015)). The Applicant here has not rebutted such a presumption by showing that another person deceived him into presenting documents to the Embassy that were not genuine.

Based on the fact pattern and the evidence present in this case, we conclude it is more likely than not that the Applicant did misrepresent a material fact through the submission of documentation that was not genuine in violation of section 212(a)(6)(C)(i), he has not established his admissibility clearly and beyond doubt (*see Bett*, 26 I&N Dec. at 440), and he requires an approved waiver to overcome this inadmissibility ground.

C. Extreme Hardship to the Qualifying Relative

To establish his statutory eligibility for a waiver of inadmissibility for willful misrepresentation, the Applicant must demonstrate that the denial of his application would result in extreme hardship to his U.S. citizen parent, his only qualifying relative. 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. Demonstrating extreme hardship under both scenarios is not required if an applicant's evidence establishes that one of these scenarios would result from the denial of the waiver. 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. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual.

On appeal, the Applicant contends that the Director erred by determining: he didn't show an effect on the qualifying relative's everyday life; how the qualifying relative would experience hardship without his presence; and that he did assert a claim of financial hardship because that issue was addressed in affidavits submitted in the request for evidence response.

The record reflects that N-F- executed the first of two affidavits in January of 2020 where she described her living conditions. N-F- is currently 54 years old, and she indicated that she resides in the United States with the Applicant's sister and her family. USCIS records reflect that N-F- immigrated to the United States in 2015 as the parent of a U.S. citizen and naturalized in 2021. She explains that she has been suffering from diabetes since 2011 and experiences difficulty sleeping and has high blood pressure, and that the severity of both conditions is increased when she feels the

added stress of worrying about the Applicant not being able to immigrate to the United States. N-F- believes that if the Applicant is able to come to the United States, her stress level will be lower, and her diabetes will not pose as much of a risk to her health.

She notes that the Applicant will be able to provide added support that her daughter and family are sometimes unable to meet. She also states that he will be able to support her financially to assist with her medical expenses as well as transportation for things such as attending English courses and medical appointments. N-F- also notes that if he were able to immigrate to the United States, it would unify their family and he would be living in the same place as his siblings. N-F- indicated the Applicant is one of her six children. Within her affidavit, N-F- did not indicate where in the United States each of her other adult-aged children reside, but she did state that they reside in this country. Therefore, N-F- has several family members in the United States who could offer familial support that she can rely on. Within her affidavit, N-F- does not indicate her level of responsibility for providing care for other family members in the United States. Considering N-F-'s first affidavit, she only indicates that she will remain in the United States, and she does not discuss returning to The Gambia if the Applicant's waiver is not granted.

N-F- provided a second affidavit from March of 2021 in which she expressed difficulty performing daily tasks due to her severe stress and diabetes. She indicates that her daughter continues to struggle dividing her time and attention between her mother and the rest of her family and is not always able to take N-F- to her medical appointments. The remaining affidavits and letters in the record are from immediate and extended family and friends, all of which reside in the same area as N-F-. The affidavit from the Applicant's sister (K-S-) conveys her concerns that her brother and mother may never see each other again. She notes the hazards N-F- could be exposed to if she were to visit the Applicant in The Gambia. She states that after having an additional child she stopped working in part to help care for her mother, but now with the added familial responsibilities, she is unable to devote enough time or financial support to fully care for N-F-. Other affidavits in the record describe how N-F- is entirely dependent on the Applicant's sister, and that his presence in the United States would alleviate some of the responsibilities that have fallen to K-S-. The record does not reflect that N-F- would be left without emotional and physical support or that the separation from the Applicant would severely impact her as long as she receives assistance from her family and continues her medications.

It is not apparent that some of the Applicant's claims that were present in the past continue to exist now. Citing to the regulation at 8 C.F.R. § 103.2(b)(1), agency policy provides that "[e]ligibility for an immigration benefit ordinarily must exist at the time of filing and at the time of adjudication." 9 *USCIS Policy Manual*, *supra* at B.5(E). The Applicant's appeal should offer discussion and evidence of events that have a greater potential to change between the time he first presented them and when the Applicant filed the appeal. Related to that burden, the Applicant does not offer updated affidavits on appeal, and it is not apparent that the situation the Applicant's mother described continues to exist today. An example of a situation that appears to have changed relates to her English proficiency. N-F- noted that she was unable to attend English language classes because her daughter did not have enough time to take her. However, she appears to have overcome this obstacle because N-F- has since naturalized and demonstrated English language proficiency, which is determined by

the applicant's ability to read, write, speak, and understand English. 12 *USCIS Policy Manual*, *supra* at E.2(A).

The record also contains documentation relating to N-F-'s medical and psychological conditions. First is a letter from her doctor stating that she has chronic type 2 diabetes, but that the condition is well maintained due to her prescribed medications. N-F-'s doctor also noted that she has been experiencing stress due to the Applicant's difficulties in immigrating to the United States. We note one discrepancy in the doctor's letter in which she states that this stress "is affecting her mental and emotional health. Currently, her physical health appears unaffected, however, I am concerned that this may change if her stress continues." From these two statements, it is unclear if the stress is affecting, or just has the potential to affect, N-F-'s physical health.

Regardless, the doctor concedes that such adverse effects are only likely if the stress leads to "medical nonadherence" in which a patient does not take their medications as prescribed, as this would return N-F- to having uncontrolled diabetes. Neither the doctor, nor other evidence in the record, weighs in on the likelihood of N-F- experiencing medical nonadherence. Additionally, the material from N-F-'s doctor does not verify some claims within the affidavits regarding her inability to perform daily tasks such as walking, standing up, standing, and other physical activities. As a result, the record lacks sufficient documentation addressing: how N-F-'s medical condition has an ongoing impact on her daily life; how it affects her ability to perform individual daily functioning; the level and frequency of assistance, if any, she requires to perform such tasks; and the severity of her condition or conditions. The Applicant has not demonstrated the extent of N-F-'s medical condition to corroborate the bulk of the medical-related claims within the affidavits.

In her second affidavit submitted with the response to the Director's request for evidence, N-F- essentially rules out her return to The Gambia, because she would not be able to obtain medications for her diabetes hindering her ability to maintain her health. In support of this claim, the record contains a May of 2016 World Health Organization profile on The Gambia relating to diabetes and an article published in *Scientific Reports* relating to diabetes trends around the world. The Applicant filed the waiver application in June of 2020 and offered evidence that reflected the country's conditions from more than four years before the waiver application filing date, and even when filing the appeal, did not offer more up-to-date material. This anachronistic material—within the fact pattern and factors of his case—does not reflect a sufficiently recent account of the availability of diabetes treatment in The Gambia, as the Applicant must demonstrate eligibility through final adjudication. 8 C.F.R. § 103.2(b)(1).

Additionally, this World Health Organization profile contains some statistics and other factors but does not offer adequate analysis pertaining to diabetic treatments in The Gambia. The Applicant did not explain how the *Scientific Reports* article supported his claims and it is not apparent from the article that The Gambia is directly discussed within the material. Based on our review of the hardship claims were N-F- to relocate to The Gambia, the Applicant has not established that the basis of that claim is factually accurate (that treatment for diabetes is unavailable in that country). He therefore

has not demonstrated that N-F- would be subject to extreme hardship if she were to relocate to The Gambia.

The Applicant also provided a psychological evaluation for his mother. It appears N-F- attended one two-hour session with the clinician in April of 2020 and that they do not have an ongoing professional relationship. The clinician described a number of maladies such as bouts of crying, heightened irritability, indecisiveness, difficulty concentrating and focusing, poor sleep and appetite, being consumed by worry and fear, as well as other physical symptoms that are amplified when her stress exacerbates her diabetic symptoms. Ultimately, the clinician diagnosed her with major depressive disorder, co-occurrent with anxiety. The clinician described the symptoms as a significant source of challenge when it comes to providing consistent care for her diabetes. They also indicated that she would benefit from counseling services but due to cultural norms, it is more likely that she will rely on trusted family members for her needed care and support.

Although the clinician described some of N-F-'s conditions as severe, they do not provide additional details such as what it means if those conditions are considered severe, nor did it offer the frequency of those conditions, nor explain how they hinder her ability to perform daily tasks. Although the evaluation diagnosed her with mental health conditions, the record does not establish the severity of her emotional hardship or the effects on her daily life. And even though the evaluation recommends that N-F- should seek out counseling services, it does not include any discussion that the clinician had with her about treatments to improve her conditions. The evaluation also does not lay out any such treatment plan other than seeking comfort from trusted family members for care and support. Ultimately, the psychological evaluation does not establish the full extent of the qualifying relative's current condition, it does not detail the extent to which her current condition might be worsened if the Applicant is unable to immigrate to the United States, and it lacks an adequately detailed treatment plan.

Turning to the economic struggles the Applicant claims N-F- would experience in his absence, the Director concluded that no financial hardship was claimed as it relates to the qualifying relative. On appeal the Applicant contests the Director's finding noting the statements within the affidavits on this topic. Although we agree with the Applicant that the affidavits contain assertions relating to N-F-'s financial issues, he did not support those statements with any documentary evidence to establish whether N-F- has a full- or a part-time job, what her earnings have been since she immigrated to the United States, evidence of medical bills, or other material that might sufficiently support the claims of financial hardship. The record contains little evidence related to the family's current financial circumstances and the Applicant did not address the ability and willingness of N-F-'s adult-aged children to provide their mother with financial assistance, if needed.

We are sympathetic to the family's circumstances, but no individual hardship factors rise to the level of extreme. Furthermore, even considering all the evidence in its totality, the record remains insufficient to show that the aggregated physical, psychological, financial, and emotional hardships of separation would be unusual or atypical to the extent that they achieve the level of extreme hardship.

The Applicant must establish that denial of the waiver application would result in extreme hardship to a qualifying relative in order to establish his statutory eligibility for a waiver under section 212(i) of the Act. As he has not demonstrated this statutory eligibility, no purpose would be served in

addressing the separate requirement that he merits a waiver as a matter of discretion.[2] Accordingly, the waiver application remains denied.

**ORDER:** The appeal is dismissed.

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of M-F-O-*, 28 I&N Dec. 408, 417 n.14 (BIA 2021) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).