



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 20899757

Date: JUN. 22, 2022

Appeal of Los Angeles, California 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 and seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). The Director of the Los Angeles, California Field Office, denied the application, concluding that the Applicant did not establish extreme hardship to his spouse, the only qualifying relative in this case, if the waiver is denied. On appeal, the Applicant contends, in part, that the Director erroneously discounted the psychological evaluation in the record. The Applicant asserts that he established the requisite extreme hardship to his spouse and that a favorable exercise of discretion is warranted.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon our de novo review, we will remand the matter to the Director for further proceedings.

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. There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the noncitizen. 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. 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).

II. ANALYSIS

The issue on appeal is whether the Applicant has demonstrated his U.S. citizen spouse would experience extreme hardship upon denial of the waiver. On appeal, the Applicant does not contest his inadmissibility, as described in the Director's decision, which we incorporate here by reference. However, the Applicant contends that the Director erroneously discounted the psychological evaluation in the record. The Applicant further contends that the Director did not properly consider or analyze the evidence in the record.

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 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. 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/policymanual>. In the present case, the record is unclear whether the Applicant's spouse would remain in the United States or relocate to China 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 both upon separation and relocation.

The record contains, among others, a statement from the Applicant, a statement from the Applicant's spouse, a psychological evaluation of the Applicant's spouse, articles concerning mental health, country conditions in China, photographs featuring the Applicant and his spouse's baptism, and financial records.

Upon review, we conclude that the record does not establish that the Director properly considered all relevant evidence related to extreme hardship to the Applicant's spouse. For instance, USCIS' electronic records indicate that the Applicant's spouse adjusted her status as an asylee, but the Director did not consider related hardship upon relocation or separation.¹ Furthermore, while the Director questioned the authenticity of the psychological evaluation, the Director did not provide an opportunity for the Applicant to respond to these allegations.² 8 C.F.R. § 103.2(b)(16)(i).

Accordingly, we will withdraw the Director's decision and remand the matter to the Director to properly consider all relevant evidence. Upon remand, the Director may request any additional evidence considered pertinent to the new determination and any other issue to determine in the first

¹ A qualifying relative's prior grant as an asylee is a significant factor to consider weighing heavily in support of finding extreme hardship in both relocation and separation. See 9 USCIS Policy Manual B.5(E)(1); available at <https://www.uscis.gov/policy-manual/volume-9-part-b-chapter-5>.

² Officers cannot substitute their medical opinion for a medical professional's opinion and must rely on the expertise of reputable medical professionals. See 9 USCIS Policy Manual 6(B); available at <https://www.uscis.gov/policy-manual/volume-9-part-b-chapter-6>.

instance if the Applicant has established extreme hardship to his spouse and merits a favorable exercise of discretion.

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