



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

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

In Re: 22720180

Date: NOV. 2, 2022

Appeal of Milwaukee, Wisconsin Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Bolivia, 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 Milwaukee, Wisconsin Field Office denied the waiver application, concluding that the Applicant has not demonstrated extreme hardship to his qualifying relative.

On appeal, the Applicant submits a brief and new evidence and contends that his qualifying relative would experience extreme hardship if his waiver application were denied. The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). In these proceedings, it is the applicant's burden 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 *de novo* review, we will remand the matter to the Director for the entry of a new decision.

I. LAW

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), renders inadmissible 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, admission into the United States, or other benefit provided under the Act. Section 212(i) of the Act provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or LPR spouse or parent of the noncitizen.

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 Applicant states that he altered the date of an expired visa to enter the United States. The Director determined that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact. The Applicant does not contest this determination on appeal, and it is supported by the record. Thus, the remaining issues on appeal are whether the Applicant has demonstrated that his U.S. citizen spouse will suffer 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 qualifying relatives, in this case, the Applicant's U.S. citizen spouse. 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 Applicant's spouse stated that she cannot move to Bolivia because she needs access to quality affordable healthcare and because she needs to ensure gainful employment. The Applicant must, therefore, establish that if he is denied admission, his qualifying relative would experience extreme hardship upon separation.

The record reflects that the Applicant, a 65-year-old male, and his spouse, a 57-year-old female, were married in Bolivia in 1998 and have a daughter who was born in Bolivia in 1998. The Applicant's spouse also has two adult sons and an adult daughter from her prior marriage.

Regarding medical hardship, the Applicant's spouse stated that she has suffered from carpal tunnel syndrome in both of her hands, chronic shoulder pain in her right shoulder, and calcific tendonitis in her right shoulder and that she had surgeries to treat calcific tendonitis in her right shoulder in 2019 and in 2020. The Applicant's spouse further stated that when her arm pain flares up, her entire arm hurts, and she needs help with basic daily activities, such as getting dressed, because she cannot even grab milk from the fridge, comb her hair, or pull up her pants and that the Applicant tries to help her as much as he can. The Director reviewed the Applicant's spouse's health concerns and determined that the record did not indicate that her adult children, including her two sons who currently live with the Applicant's spouse, would not be able to provide support for their mother.

Regarding emotional hardship, the Applicant's spouse stated that she suffers from anxiety and depression, that she takes a medication to help her depression and sleep better at night, and that she attends therapy every Friday for her major depression, anxiety, chronic insomnia, and post-traumatic stress disorder (PTSD). The Applicant's spouse stated that the Applicant sleeps by her side and comforts her and that she does not know how she would cope if she is permanently separated from the Applicant. The Director noted that the spouse's PTSD and anxiety stemmed from her childhood and

found that a diagnosis of anxiety, PTSD, and depression alone did not rise to the level of extreme hardship. The Director acknowledged that the Applicant is emotionally supportive of his spouse but determined that the record did not establish that separation from the Applicant would affect the spouse's ability to function in her daily life. The Director added that the Applicant's spouse has a support network in the United States, including her four adult children, and that it has not been established that her four adult children would not be able to assist their mother as needed.

Regarding financial hardship, the Applicant's spouse stated that she worked full-time at a restaurant as a cook and part-time at a building maintenance company as a cleaner. However, as of October 2019, she was unable to work and received worker's compensation benefits, which compensated a percentage of her wage at the restaurant. The Applicant works full-time at a restaurant and part-time at a building maintenance company. The Applicant's spouse stated that she and the Applicant earn a gross monthly income of about \$3,591.68, that their minimum monthly expenses are about \$4,810.53, and that if the Applicant is not able to remain in the United States, she would be left to depend on her two sons. The Applicant's spouse stated that since she is on medical leave, she needs the Applicant to help with the household expenses. She also stated that the added expenses of upholding two households, her household in the United States and the Applicant's household in Bolivia, would be an extreme financial hardship. She further stated that she cannot afford to travel to Bolivia to visit the Applicant. The Director acknowledged that the Applicant's spouse took a medical leave of absence from her jobs but found that she has since returned to work. The Director also noted that the Applicant's stepdaughter submitted an affidavit of support for the Applicant and that the record did not indicate that the stepdaughter would not be able to support her mother.

Regarding educational hardship, the Applicant's spouse stated that she was not able to complete her education in Bolivia after ninth grade, that her goal is to continue her education to gain skills that would help her get a job that is less physically demanding, and that in the United States, adults are encouraged to continue their education and their life experience is valued, but this is not the way in Bolivia. The Applicant's spouse also stated that her younger daughter is studying at a university and that it is important to her and her daughter that the Applicant be there when her daughter graduates. The Director noted that three of the Applicant's four children have either graduated from college or are in the process of graduating and found that the record did not contain evidence to suggest that the Applicant's spouse could not further her education should she stay in the United States.

On appeal, the Applicant submits a statement from his stepdaughter, which indicates that the Applicant's stepdaughter and her husband are not in a position to provide emotional or physical care for the Applicant's spouse because they have two young children to care for; her husband has rotating shifts at work; and they live about two hours away from her mother's house by car. The Applicant's stepdaughter states that her mother does not drive, and her father takes her mother everywhere she needs to go, including her medical appointments and therapy. The Applicant's stepdaughter further states that if her father could not be here with her mother, her mother would have to sell her house because they could not pay the mortgage for her house, her mother would lose all her independence, and her mother would likely have to move in with her family. The Applicant's stepdaughter also states that her two brothers currently live with their mother, but they are not financially independent, they do not have legal status, and they would have to find a new place to live or also move in with her family.

On appeal, the Applicant also submits a statement from his daughter, which indicates that during the school year, the Applicant's daughter lives on campus and works 16 hours a week and she relies on her father to assist her with her phone bill, car insurance, and other fees. The Applicant's daughter also states that her father takes her mother to her hospital visits, takes care of all household duties, fixes their house, and ensures that their household is comfortable. The Applicant's daughter further states that her mother has endured trauma and obstacles in her lifetime and that her father has been an essential part of her mother's healing and has emotionally supported her mother. The Applicant further asserts that it is unreasonable to claim that his two sons who do not have lawful status in the United States and are awaiting a decision on their permission to remain in the United States are reliable sources of future support for the Applicant's spouse.

On appeal, the Applicant asserts that his spouse's severe depression, PTSD, and other mental health issues, combined with her physical health problems, are disabling. The Applicant further asserts that that his spouse relies on him to function and requires medical treatment and care and support from him. The Applicant also asserts that significant weight should be given to his spouse's psychological evaluation, explaining how separation from the Applicant would aggravate his spouse's mental illnesses, caused by her prior trauma. The Applicant submits a letter from a licensed professional counselor at [REDACTED] a counseling and resource clinic, which states that the Applicant's spouse has been receiving mental health services at the clinic for the past three years and participates in a weekly, two-hour support group. The counselor notes that during a mental health evaluation, the Applicant's spouse shared histories of childhood abuse and neglect and that given the Applicant's spouse's presenting illnesses, she is at very high risk for disabling and extreme depression that would require more intensive health care intervention and resources. The counselor also states that although the Applicant's spouse is currently working, she is experiencing occupational instability and financial difficulties because of a work injury for which she did not receive compensation.

On appeal, the Applicant also submits a letter from a medical doctor at the University of [REDACTED] School of Medicine and Public Health [REDACTED] which states that the Applicant's spouse is currently being treated for moderate episode of major depressive disorder at the office and that he expects considerable worsening of her depression and anxiety symptoms if her husband was required to leave the country. The Applicant also submits a letter from a licensed clinical social worker at [REDACTED] which states that the Applicant's spouse has severe anxiety and major depressive disorder, she continues to receive counseling services at the clinic, and her mental health conditions will worsen if her husband leaves the country.

Considering the Applicant's brief and new evidence submitted on appeal relating to emotional, psychological, and financial hardships to his spouse if she remains in the United States without the Applicant, we find it appropriate to remand the matter for the Director to determine in the first instance if the Applicant has established extreme hardship to his spouse. If the Director finds that the Applicant has established extreme hardship to his spouse, then the Director must consider whether he merits a favorable exercise of discretion.

III. CONCLUSION

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