



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

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

In Re: 20899704

Date: NOV. 7, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa 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 misrepresentation of 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 Field Office 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 his father, who is a U.S. citizen.

The matter is now before us on appeal. 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 conclude that a remand is warranted in this case.

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) of the Act. 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) of the Act. 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).

II. ANALYSIS

A. Inadmissibility

The Applicant is attempting to immigrate to the United States based on a relative petition filed on his behalf by his U.S. citizen father. The U.S. Embassy in Sanaa, Yemen refused the Applicant’s application for an immigrant visa in 2008 under section 212(a)(1)(A) of the Act for health-related grounds. In July 2009, U.S. State Department officials informed him that if he demonstrated the absence of the health-related ground for the next three years, they would reconsider the inadmissibility ground. The Applicant periodically supplied the State Department officials with the associated medical reports beginning in 2009 through 2011, and after the final medical report the Applicant was determined to be in full remission. In the same month of the final medical report, State Department officials determined one of the reports was falsified.

Within the Applicant’s appeal brief, he indicates it is his understanding that the alleged misrepresentation resulting in his inadmissibility ground was associated with the medical records. However, he indicates he requested reconsideration of the inadmissibility finding because he claims he followed all of the instructions from the Embassy-approved physician, but the physician was subsequently terminated by the Embassy because he submitted fraudulent reports. After that, the Applicant was referred to another physician and completed the remission program. He is unsure why the State Department continued to find him inadmissible.

The Applicant’s statements on appeal appear to align with the narrative he included with the waiver application. On the waiver application, the Applicant indicated again that he complied with the State Department’s requirements relating to the first physician during the three-year period. But he was referred to a second physician and he was informed that he had to provide proof that he complied with the remission program for one additional year because the first physician had submitted fraudulent medical reports and was no longer an approved physician. After transferring from the U.S. Embassy in Sanaa to the U.S. Embassy in Cairo, Egypt because of unrest in Yemen, the Applicant received a letter implying he was inadmissible because the correspondence required him to file a waiver application. He further indicates he did not understand why he was found to be inadmissible “because I did not lie about [the relevant health-related ground] or any other facts during my interviews at the embassy at Sanaa and Cairo.”

Additionally, he states his attorney sent an inquiry to the U.S. Embassy in Cairo requesting clarification of what he is alleged to have misrepresented, but the Embassy did not respond leaving him unable to meaningfully contest or to ask for reconsideration of the inadmissibility finding. We note the record does not contain probative evidence to corroborate the Applicant's claims relating to the first physician and the manner in which the physician had submitted fraudulent medical reports (e.g., if the physician's actions went beyond the Applicant's medical records or the doctor's actions were limited to the Applicant).

Without sufficiently probative materials corroborating the Applicant's claims relating to this physician, he has not met his burden to support his claims that he had no hand in the submission of falsified medical records, and it was the first physician alone who took part in that act. Accordingly, the Director concluded the Applicant submitted falsified medical records to the U.S. Embassy in Sanaa, and in turn, he required an approved waiver application.

B. Extreme Hardship

The Director briefly considered the Applicant's claims of hardship his father would experience if the Applicant was denied admission as a lawful permanent resident (LPR) and his father remained in the United States. However, as the Applicant notes on appeal, the Director did not discuss his claims of hardship to his father were the father to relocate to Egypt with his son.

Moreover, the Director did not evaluate the Applicant's claims for his second qualifying relative, his mother who is an LPR. Although the Director acknowledge the existence of the Applicant's mother as someone who should fill the role of a qualifying relative, they did not evaluate any hardship effects relating to her. The Applicant included claims relating to his mother on his waiver application, in the addendum attached to the application, and the record contains a statement from his mother. The Director should have considered the hardship claims associated with the Applicant's mother not only individually, but also when they considered the Applicant's hardship claims in the aggregate.

Because the record does not reflect that the Director considered all the Applicant's hardship claims before forwarding the appeal to our office, we will return the matter to them to consider the full record and to determine whether the Applicant (1) established extreme hardship to a qualifying relative, and if so, (2) whether he warrants a favorable exercise of discretion.

Additionally, if the Applicant provides the Director with additional evidence that adequately supports his contention that he is not inadmissible, the Director should consider whether it would be appropriate to correspond with the U.S. State Department to review or remove their inadmissibility determination.

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