U.S. Citizenship and Immigration Services

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

In Re: 21862101

Date: OCT. 12, 2022

Appeal of San Francisco, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico, 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 San Francisco, California Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant did not establish, as required, that his qualifying relative would suffer extreme hardship upon the Applicant's removal from the United States. The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and asserts that the Director's decision was erroneous as a matter of law and fact. 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). Upon *de novo* review, we will remand 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 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 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). While some degree of hardship to qualifying relatives is present in most cases, 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 requisite extreme hardship is established, the foreign national must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. In these proceedings,

the Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

## II. ANALYSIS

The Director found the Applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act, a determination that is supported by the record.[1] The Applicant does not contest the Director's inadmissibility finding on appeal.

The Applicant seeks a waiver of this inadmissibility under section 212(i) of the Act and asserts that he established extreme hardship to his 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. *See* 9 *USCIS Policy Manual* B 4(B), https://www.uscis.gov/policymanual (providing guidance on establishing hardship in the event of relocation or separation). In the present case, the record includes a statement from the Applicant's spouse indicating that she would endure hardship in both scenarios if the Applicant's waiver application were denied. The Applicant must therefore establish that if he is denied admission, his

[1] The record indicates that the Applicant was granted a B-1/B-2 Border Crossing Card on March 30, 2004. On May 20, 2004, he entered the United States and left at or around September 2004. The Applicant returned to the United States on October 19, 2004 and has not departed since. On May 2, 2013, the Applicant filed his first Form I-485, Application to Register Permanent Residence or Adjust Status. The marriage certificate submitted with the Form I-485 indicated that the Applicant was married in [redacted] Mexico on [redacted] 2003. The Director determined that the Applicant's failure to disclose his marriage to a lawful permanent resident during the consular visa interview and the application process was a material misrepresentation because it cut off a line of inquiry by the consular officer. The Director stated that had the Applicant's true marital status been known, he would have likely been denied the Border Crossing Card. On October 21, 2013, the Applicant filed a Form I-601, Application for Waiver of Grounds of Inadmissibility. Both the I-601 and the first Form I-485 were denied on March 11, 2014. A subsequent appeal was dismissed by the Administrative Appeals Office on November 16, 2014, and a motion to reopen/reconsider was rejected due to untimely filing. On April 10, 2017, the Applicant filed a second Form I-485. On March 6, 2018, the Applicant appeared for an interview and testified that the information on the Form I-485 was true and correct, and the supporting documents were true and correct. During the interview, the Applicant testified that he got married on [redacted] 2004, and therefore he was not inadmissible under section 212(a)(6)(C)(i) of the Act. He stated that the Mexican authorities made a typographical error on the marriage certificate and that he noticed the error on his first Form I-485 around the time he hired another attorney but by then it was too late to correct the error. With his second Form I-485 the Applicant submitted a corrected marriage certificate along with three separate letters from an officer of the Mexican Civil Registrar explaining the registrar's error on the previously submitted marriage certificate. The corrected marriage certificate reflected a date of marriage of [redacted] 2003. An Overseas Verification was conducted of the databases in the central civil registry of the State of [redacted] Mexico. The State Archives found the marriage certificate in question on their database, confirming the recorded date of the marriage as [redacted] 2003. There is no legal history of annotations recorded. Any corrections or annotations would be recorded, signed, and sealed by the registrar of the civil registry and/or by the Legal Director. Therefore, the Director found the marriage certificate questionable and issued a notice of intent to deny (NOID). The Applicant submitted his response to the NOID, and the Director denied the Form I-601 on May 13, 2021, finding that the Applicant remained inadmissible pursuant to 212(a)(6)(C)(i) of the Act.

spouse would experience extreme hardship if she remained in the United States without him or relocates to Mexico.

On appeal, the Applicant argues that the Director did not consider his spouse's serious mental health conditions including major depressive disorder with recurrent episodes, anxiety disorder and panic attacks, which impair her ability to function. A Confidential Mental Health and Diagnostic Evaluation Report conducted in May 2020 indicates that she suffers from anxiety disorder, unspecified, and she routinely experiences a range of symptoms including frequent crying spells, fatigue, and insomnia. The record reflects that the Applicant's spouse has been prescribed anti-depressant and anti-anxiety medication since at least 2020, including Wellbutrin and Alprazolam. The Applicant's spouse states that if she departs the United States, she will lose her health insurance and she would not receive proper care in Mexico for her pre-existing conditions. The Applicant states that he leaves work to help his spouse when she has panic attacks or when she suffers from vertigo. The Applicant indicates that he is a devoted father to his two children, and the primary caregiver when his spouse is unwell, or absent from the home. He cooks, gets them ready for school, and helps them with their homework. While the Director referenced the Applicant spouse's medical conditions and family ties, the decision does not indicate that the Director fully considered the claimed hardships with respect to both her health and the Applicant's caregiver responsibilities to his children. The Applicant also contends that he is an integral part of his spouse's trucking business because she has little knowledge of the industry and relies on him to manage the business. In addition to maintaining full-time employment at another company, he tracks expenses and vehicle mileage, among other administrative tasks. The Director noted the Applicant's claim that there would be a reduction/loss of income, but he did not discuss the financial implications of the Applicant's departure.

On appeal, the Applicant submits documentation indicating that as of July 2021, his spouse was prescribed medication for a major depressive disorder. Additional documentation shows that she has also been prescribed other medication to treat depression and that she suffers from gastroesophageal reflex disease for which she is prescribed Pantoprazole. The record also confirms that the Applicant's spouse has been receiving treatment for vertigo since at least December 2020. The Applicant reiterates his concern that his spouse may lose the trucking business if he is denied a waiver because she cannot manage it on her own, nor would she be able to manage the business from Mexico. On appeal, the Applicant submits several emails which show him conducting business on behalf of the trucking company including arranging for the workers to get paid; securing insurance; assisting in the preparation of taxes; and communicating with other companies and vendors. The Applicant also submits wage and tax statements which show that in 2020, his wages were significantly higher than his spouse's.

Considering the foregoing, we will remand the matter to the Director to reevaluate the submitted evidence, including that submitted on appeal, and determine whether the Applicant has established extreme hardship to his U.S. citizen spouse, and if so, whether he warrants a favorable exercise of discretion.

## III. CONCLUSION

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