



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

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

In Re: 22758864

Date: OCT. 14, 2022

Appeal of Chicago, Illinois 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 (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).

The Director of the Chicago, Illinois Field Office denied the application, concluding that the record established that the Applicant's United States citizen spouse would experience extreme hardship but that the "unfavorable factors in [the] case outweigh the favorable factors and [the Applicant does] not warrant a favorable exercise of discretion."

On appeal, the Applicant does not contest the finding of inadmissibility or of extreme hardship to her qualifying relative, which are supported by the record. She contends, however, that her spouse will continue to experience extreme hardship and that she warrants a positive discretionary finding.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will sustain the appeal.

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

In determining whether a waiver should be granted as a matter of discretion, we must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Matter of Mendez-Morales*, supra, at 300 (citations omitted). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration

laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the noncitizen and his or her family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

II. ANALYSIS

We agree with the Director's conclusion that the Applicant's qualifying relative would experience extreme hardship if the waiver application were denied. The sole issue on appeal therefore is whether the Applicant's waiver should be granted as a matter of discretion. Upon review of the evidence in the record, including the evidence submitted on appeal, we find a favorable exercise of discretion is warranted in this case.

Regarding the Applicant's positive discretionary factors, the Director found her spouse would experience extreme hardship should her waiver be denied. However, the Director found the unfavorable factor to be her "significant and repeated violations on the United States' immigration laws in making willful misrepresentations about your employment at [REDACTED] in order to keep your F1 status (Optional Practical Training Program (OPT)). In addition, you even indicated in your Form I-485 that you worked for that employer too. During your adjustment interview, when confronted with it, you admitted that you only paid someone to provide you a false employment document that purported to evidence employment in order to permit you to fraudulently extend your F1 status via the OPT program." The Director further indicated that the Applicant's "deceitful manner of seeking benefits under the immigration laws demonstrates a complete disregard for the law and lack of honesty."

On appeal, the Applicant submits additional evidence of her family ties to the United States, specifically evidence that she is pregnant with her first child. She also submits an updated statement, and statements from her husband, and other close U.S. family members, as well as character reference letters from her former employer, a coworker, and neighbors. These statements are written in a candid, detailed, and credible manner, which lend credence to the Applicant's statements of remorse, and they support a conclusion that her overall character is not deceitful or lacking in honesty.

The Applicant argues the Director erred in giving the negative factors in her case too much weight in her discretionary determination and contends the totality of the circumstances in this case indicate a positive exercise of discretion is warranted. We agree. The Applicant's use of an inauthentic employment letter and her continuing reference to [REDACTED] as part of her work history on her adjustment application was certainly problematic, and it necessitated the filing of this waiver application. However, she consistently expresses a deep remorse and understanding for the negative implications of her actions. We note, too, that the Applicant expresses her understanding of her obligation to fully disclose information, and to provide honest and forthcoming information in her dealings current and future dealings with our immigration system. As the Director noted, when the Applicant was confronted with the derogatory information at her adjustment interview, she acknowledged that the letter she submitted was not authentic and that she knew this information was

wrong. (During her November 5, 2020 sworn statement, the Director questioned her regarding her work history and about the inauthentic letter she provided. She responded “I provided [my school] a letter from [redacted] saying that I was working with them but actually I never work there. I submitted it to the school to keep my F1 status.” When asked if she thought this was “correct,” she responded “No, but I would like to keep my F1 status.”) More importantly, the Director found extreme hardship to her qualifying relative spouse, and therefore, should have approved her waiver application in the exercise of discretion under the totality of the circumstances.

In sum, we find that the Applicant’s U.S. education achievements, residence of long duration in the United States beginning in August 2010 when she was 19 years old, her community and family ties, lack of a criminal record, payment of taxes, expression of remorse for her actions, history of gainful employment, and letters of support as well as her spouse’s extreme hardship are significant positive factors that outweigh the negative factors in her case. As to the misrepresentation itself, the Applicant expressed remorse for the misrepresentation leading to her inadmissibility (“I could not be more ashamed about the actions I took.”) Thus, the balancing of the positive equities in this case against the negative factors warrants a favorable exercise of discretion.

Accordingly, we withdraw the Director’s decision, as the waiver application merits approval.

ORDER: The appeal is sustained.