



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

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

In Re: 22836132

Date: OCT. 31, 2022

Appeal of Denver 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), 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 Denver 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 their U.S. citizen spouse, his only qualifying relative, but the Director also determined that discretion should be exercised in his favor. We note the decision regarding discretion was unnecessary without the demonstration of extreme hardship to a qualifying relative.

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 will dismiss the appeal as moot for the reasoning outlined below.

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). We must balance the adverse factors evidencing an 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. *Id.* 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 while in compliance with our immigration laws (particularly where residency began at a young age), evidence of hardship to the foreign national and their 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

The Applicant married his first spouse in the Republic of Liberia (Liberia) prior to his entry into the United States. He entered the United States in 2002 using a nonimmigrant visitor’s visa, he married a U.S. citizen in 2005, and she filed a Form I-130, Petition for Alien Relative on his behalf in 2007. In support of that petition, the Applicant obtained an apparent fraudulent Bill of Divorcement (divorce decree) from Liberia to make it appear he was eligible to marry his U.S. citizen spouse.¹ The divorce decree also was not issued by the proper entity as outlined in the U.S. Department of State’s Reciprocity Schedule for Liberia. *See Liberia*, Travel.State.Gov (Oct. 31, 2022), <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Liberia.html>. To date, the Applicant has not produced sufficient evidence demonstrating his first marriage was terminated before he married his U.S. citizen spouse.

After a series of related events, the Applicant filed for adjustment of status under the Liberian Refugee Immigration Fairness provisions of the National Defense Authorization Act for Fiscal Year 2020 (NDAA 2020).² As part of that adjustment application, the Applicant filed this waiver application to waive the misrepresentation of a material fact that he divorced his first spouse prior to marrying his

¹ We incorporate by reference the Director’s findings of the aspects of the apparent fraudulent nature of the Bill of Divorcement.

² *See* Section 7611 of NDAA 2020, Pub. L. 116-92, 113 Stat. 1198, 2309 (December 20, 2019).

second spouse. The Applicant makes no attempt to refute or to deny that he misrepresented a material fact regarding his eligibility to marry in the United States.

We conclude that this waiver application is moot. The only relationships that may serve as the basis for a waiver for misrepresentation are those in which the Applicant is the spouse, son, or daughter of a U.S. citizen or LPR. Section 212(i) of the Act. Such a qualifying relationship must not only exist on paper or in theory, but it must also be valid in the eyes of the law.

Allowing a foreign national to qualify for a waiver based on an invalid relationship—a relationship in which USCIS would deny a Form I-130—would result in an absurd or bizarre outcome; a situation we attempt to sidestep. *See Mohamad v. Palestinian Auth.*, 566 U.S. 449, 455 (2012) (concluding that we should strive to avoid results that Congress and the implementing regulations could not plausibly have intended). A marital relationship determined to be invalid under immigration laws cannot serve as the basis to obtain immigration benefits. *Cf. Skelly v. INS*, 630 F.2d 1375, 1383 (10th Cir. 1980) (concluding a foreign national who could not show they were in a marital relationship that immigration authorities considered to be valid, was not eligible for a favorable determination on their application for a stay of a deportation order).

The Applicant's 2005 union with his U.S. citizen spouse created a relationship that was invalid from its inception. Because the Applicant may not rely on an invalid relationship for this waiver, we withdraw the Director's favorable discretionary determination, and we will dismiss this appeal as moot.

ORDER: The appeal is dismissed.