



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

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

In Re: 25839803

Date: APR. 14, 2023

Appeal of Newark, New Jersey Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of Nigeria currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be “admissible” or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. See section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Newark, New Jersey Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant had not established that his refusal of admission would result in extreme hardship to his spouse. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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 withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 212(a)(6)(C)(i) of the Act renders inadmissible 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, admission into the United States, or other benefit provided under the Act. As stated, this inadmissibility may be waived if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the alien. 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).

II. ANALYSIS

The Director determined that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The Applicant does not contest this determination, and it is supported by the record.¹ In order to establish eligibility for a waiver under section 212(i) of the Act, the Applicant must first demonstrate that denial of the application would result in extreme hardship to a qualifying relative, in this case his U.S. citizen spouse. 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.²

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 with the applicant. See generally 9 USCIS Policy Manual B.4(B), <https://www.uscis.gov/policymanual> (explaining, as guidance, the two potential scenarios to consider). The Applicant submitted with his waiver application a statement from his spouse certifying under penalty of perjury that she would relocate to Nigeria if the applicant were denied admission.³ In the decision denying the waiver application, the Director determined the described hardship were the common results of removal and do not rise to extreme hardship. The Director weighed the following factors: the Applicant’s spouse was born and raised in the United States with no ties to Nigeria, is an only child who provides care emotionally and financially for her mother and aging grandparents, was diagnosed with “Adjustment Disorder with mixed anxiety and depressed mood,” by a social worker assessing the impact of the Applicant’s deportation on his spouse, would have to give up her career as a merchandise purchaser, and has fears of starting a family with the high infant and maternal mortality rates in Nigeria.

¹ In 2014 the Applicant obtained a visitor’s visa to the United States. In April 2016, the Applicant attempted to enter the United States and, after being questioned by United States officials, admitted that the information provided in his visa application was inaccurate and the supporting documents he possessed on his person were fraudulently obtained. The Applicant later pled guilty in a United States District Court to using and possessing a nonimmigrant visa, knowing such document was procured by means of false statements and by fraud and was unlawfully obtained, in violation of 18 U.S.C. § 1546(a).

² The discretionary analysis is a separate, additional component of adjudicating the waiver request and is typically assessed after an officer has determined that the Applicant meets all applicable threshold eligibility requirements. See generally 1 USCIS Policy Manual E.8, <https://www.uscis.gov/policymanual> (discussing, as guidance, when in the adjudication process discretion is assessed). As the Director did not reach this issue, we need not address discretion here and leave for the Director to determine in the first instance should the Applicant first establish extreme hardship to his spouse.

³ The Applicant submitted other evidence in support of his waiver application. While we only refer to documents relevant to our analysis, we have reviewed the record in its entirety.

However, the Director did not afford significant weight to evidence that the Applicant's spouse may be persecuted on account of her religion or her relationship to Applicant, or how the trauma the Applicant would face upon returning to Nigeria would weigh on his spouse. For example, the Director explained that the Applicant had not established that his wife would be harmed or the police would not protect her, that the Applicant had not specified which part of Nigeria they would relocate to and thereby had not substantiated his claims that she would be unable to obtain a job.

On appeal, the Applicant submits a birth certificate demonstrating he and his spouse now have a son, medical records evidencing his wife has fibroids and will require further medical monitoring, and the Board of Immigration Appeals' decision regarding his claim for asylum. The decision provides, in relevant part:

In order to establish past persecution, the respondent must establish harm rising to the level of persecution, that the harm experienced was on account of a protected ground, and that the government was unable or unwilling to protect him. As discussed above, the respondent has met his burden of establishing the first two of these three factors. However, the Immigration Judge did not address whether the government was unable or unwilling to protect the respondent. . . . On remand, the Immigration Judge should . . . take[] into consideration that the respondent reported the beatings to the police who demanded money and told him that he deserved it because he denied a blood transfusion for his mother.

The decision also discusses the Applicant's credibility, the harm he faced by his family on account of his being a Jehovah's Witness, his attempt to relocate from his family, and his inability to protect or prevent the killing of his niece, who was living with him, from his family. This evidence provides additional credible corroboration directly relevant to the Director's analysis of extreme hardship to the Applicant's spouse. As the record does not indicate that the Director reviewed this additional evidence, we will return the matter of extreme hardship to the Director for consideration.

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