



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

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

In Re: 25592125

Date: APR. 28, 2023

Appeal of Louisville, Kentucky Field Office Decision

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

The Applicant has applied to adjust status to that of a lawful permanent resident 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 willful misrepresentation.

The Director of the Louisville, Kentucky Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish extreme hardship to a qualifying relative and does not merit a favorable exercise of discretion. 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 dismiss 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 U. S. citizen or lawful permanent resident spouse or parent of the noncitizen. 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). 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).

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 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 generally 9 USCIS Policy Manual B.4(B), <https://www.uscis.gov/policymanual>. In the present case, the record contains an affidavit from the Applicant's spouse in which he states "We cannot be separated. If my wife and I must go back to China together. We will face a lot of difficulties..." and "If she can't stay in America. We have no choice but to separated..." The Applicant's spouse does not state a clear intent to either remain in the United States or to relocate. The Applicant must therefore establish that if she must depart the United States, her spouse would experience extreme hardship upon both separation and relocation.

If the foreign national demonstrates the existence of the required extreme hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

II. ANALYSIS

The Applicant does not contest that she is inadmissible for fraud or misrepresentation. She falsely stated she was engaged and employed with [REDACTED] Company in her 2014 nonimmigrant visa application and at her consular interview. She seeks a waiver of this ground of inadmissibility. On appeal, the Applicant submits a brief contending that she established eligibility for the waiver based on extreme hardship her citizen spouse and that the Director failed to consider all the hardship to her qualifying relative. The Applicant also argues, through counsel, that we should "take into consideration not just the submitted evidence but also consider factors, arguments, and evidence relevant to the extreme hardship determination the applicant has **not** specifically presented, such as those addressed in Department of State (DOS) information on country conditions." (emphasis in original). Contrary to this assertion, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Ho*, 19 I&N Dec. 582, 588-89 (BIA 1988); *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966). The Applicant's burden includes the burden of production, which is the obligation to submit enough evidence to have the issue decided on the merits. *AAO Practice Manual*, Ch. 3.5, <https://www.uscis.gov/aao-practice-manual>.

Regarding medical hardship, the Applicant's spouse states he suffers from frequent back and leg pain and his "stomach is also very bad" and the Applicant looks after his physical and mental well-being. The Applicant's spouse reported to a psychologist that he suffers severe lower back pain, severe ulcer, dizziness, and severe finger pain. He also reported that the Applicant makes sure that he eats well despite his hectic work schedule and helps manage his body pains. The record contains the following medical documentation: a one-page report from [REDACTED] from December 2021

indicating the Applicant's spouse reported low back pain and received an x-ray; a gastrointestinal pathology report from December 2021; colonoscopy discharge instructions, and three articles about Helicobacter Pylori infection. The Applicant argues on appeal that the Director's decision dismissed the diagnosis of H. Pylori. The documentation before us indicates the Applicant's spouse received an x-ray and colonoscopy in December 2021; however, the record does not contain an evaluation, diagnosis, or explanation of the need for assistance. Although the record indicates the Applicant cares for her spouse, the record does not indicate the spouse suffers from a serious medical condition that requires ongoing assistance from the Applicant.

Concerning financial hardship, the Applicant's spouse states that without the Applicant, he believes his company will fail. The Applicant's spouse owns a construction company. He asserts that the Applicant sometimes helps him with his work to reduce stress and has contributed to his company by helping with paperwork. The record does not contain documentary evidence outlining the extent of the Applicant's work for her spouse's construction company or explain why her spouse could not hire an employee to provide similar support. The Applicant's spouse also states that the Applicant has a job to share the financial stress, including bank loans and living expenses. The record contains copies of joint federal income tax returns for 2019, 2020, and 2021; copy of federal income tax return for 2020 for the Applicant's spouse's company; and copies of settlement and mortgage documentation for two properties. The documentation submitted with the waiver and now on appeal does not outline the household income, assets, and liabilities, to establish the household's complete financial picture. As such, the record does not sufficiently establish the Applicant's spouse's current financial circumstances and does not contain sufficient evidence to support the assertion that the Applicant's relocation would threaten her spouse's ability to cover essential expenses.

Regarding emotional and psychological hardship, the Applicant's spouse states that he suffers from depression, anxiety, and insomnia due to stress. The Applicant submitted two psychological evaluations for her spouse. The most recent psychological assessment by a licensed psychologist from November 2022, indicates that the Applicant's spouse suffers from Major Depressive Disorder and Anxiety Disorder. The assessment states recommends that the Applicant's spouse receive cognitive, behavioral, and supportive psychotherapy to improve his mood and manage stress. The record does not contain any treatment plan for the spouse's diagnosis, ongoing sessions with a mental health professional, or sufficient evidence to indicate the spouse needs daily assistance due to his diagnosis. The evidence in the record does not sufficiently establish that the emotional effects of separation from the Applicant would be more serious than the type of hardship normally suffered when one is faced with the prospect of separation from one's spouse.

The Applicant's spouse indicates that separation from the Applicant will cause extreme hardship to his daughter, the Applicant's stepdaughter. Hardship to the Applicant's stepdaughter may be considered to the extent it causes hardship to the Applicant's spouse, the only qualifying relative in this case. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002). We note that the Applicant's stepdaughter is an adult currently living and working independently in Turkey, and there is no evidence that she requires assistance from the Applicant or her spouse.

Finally, we acknowledge that the Applicant indicates that she has recently been diagnosed with breast cancer. As already noted, hardship to the Applicant, or others, can be considered only insofar as it results in hardship to a qualifying relative. The Applicant's spouse states that he is concerned that the

Applicant would not be able to receive proper treatment in China and that the costs of medical care in China would consume his savings. The Applicant submitted a Referral to Oncology indicating that she has been received a diagnosis of “invasive ductal carcinoma of left breast in female.” However, the does not contain a treatment plan for the Applicant’s diagnosis, evidence that the Applicant would be unable to obtain necessary medical treatment in China, or documentation on country conditions corroborating the Applicant’s spouse’s statements.

III. CONCLUSION

As the Applicant has not established extreme hardship to her U.S. citizen spouse in the event of separation, we cannot conclude she has met the requirement that denial of the waiver application would result in extreme hardship to her qualifying relative upon both separation and relocation. In addition, because the Applicant has not demonstrated extreme hardship to her qualifying relative if she is denied admission to the United States, we need not consider whether she merits a waiver in the exercise of discretion. The waiver application will remain denied.

ORDER: The appeal is dismissed.