



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

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

In Re: 24726968

Date: AUG. 7, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant, a native and citizen of Vietnam currently residing in Vietnam, has applied for an immigrant visa. 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* Immigration and Nationality Act (the Act) section 212(i), 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 Nebraska Service Center denied the application, concluding that the record did not establish that the Applicant’s U.S. citizen spouse would experience extreme hardship if she were denied admission to the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant states that her spouse would experience extreme emotional and financial hardship if her application is denied.

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.

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. 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 noncitizen. Section 212(i) of the Act. If the noncitizen demonstrates the existence of the required hardship, then they must also show that U.S. Citizenship and Immigration Services should favorably exercise its discretion and grant the waiver. *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).

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. *See 9 USCIS Policy Manual B.4(B)*, <https://www.uscis.gov/policymanual>. 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. *See id.* 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 id.* Here, neither the applicant or her spouse make an affirmative statement of intent to relocate or separate but argue that the Applicant’s spouse would experience extreme hardship under both scenarios. Therefore, the Applicant must establish that her U.S. citizen spouse would experience extreme hardship if he remained in the United States while the Applicant remained in Vietnam and if he relocated to Vietnam with the Applicant.

The Applicant contests her finding of inadmissibility on appeal, stating that she did not enter her marriage with her prior spouse for the sole purpose of obtaining a visa to the United States and that her spouse passed away before the appeal process could be completed. The U.S. Department of State concluded that the Applicant is inadmissible for fraud and misrepresentation for entering into a marriage with a U.S. citizen for the sole purpose of obtaining an immigration benefit. Because the Applicant is residing abroad and applying for an immigrant visa, the U.S. Department of State makes the final determination concerning eligibility for a visa. Thus, as a result of the Consular Officer’s findings of inadmissibility, the Applicant requires a waiver under section 212(i) of the Act.

In his statement to the Director, the Applicant’s spouse states that he would experience extreme emotional and financial hardship if his spouse were not allowed to come to the United States and if he were forced to relocate to Vietnam. Regarding separation, the Applicant’s spouse stated that he would suffer emotionally from being separated from his spouse. To support this claim, the Applicant submitted an “Immigration Evaluation” for her spouse that concluded he is suffering from Major Depressive Disorder. With regard to moving to Vietnam, the Applicant provided evidence that her spouse is employed in the United States and claimed that he would be unable to work in Vietnam due to not having a labor permit. We note that the Applicant’s spouse was born in Vietnam and lived there for many years before emigrating to the United States. The Applicant’s spouse also stated that he would be unable to adapt to the culture in Vietnam or visit for more than three months at a time. The Director issued a Request for Evidence (RFE) seeking additional information regarding the claimed extreme hardship of the Applicant’s spouse.

In response, the Applicant provided an additional statement from her spouse where he re-iterates his claims from his first statement and further states that quality healthcare would be generally unavailable. The Applicant also provided additional financial documents including bank statements

and taxes as well as information related to the employment of foreigners in Vietnam. The Director determined that the Applicant had not established that the collective hardship rose to the level of “extreme,” as required, and denied the application.

On appeal, the Applicant states that her spouse would suffer extreme mental and emotional hardship without her in the United States. Upon de novo review, the Applicant has not met her burden of proof in establishing extreme hardship to her U.S. citizen spouse either upon separation or relocation to Vietnam. In her statement on appeal, the Applicant argues that her spouse would experience increased stress that would affect his health. To support her claim she provides a prescription and hospital discharge document from her spouse’s recent visit to Vietnam. Neither the prescription document or the discharge document explain the extent, severity, or cause of the condition of the Applicant’s spouse. Other than her assertions, the Applicant has not provided any additional evidence related to her spouse’s mental condition or claim of extreme emotional hardship.

The Applicant did not provide any additional evidence of financial hardship if she and her spouse remained separated other than to indicate that her spouse would be unable to visit Vietnam on a regular basis. The bank statements and financial documents submitted on appeal show a sizeable amount of savings and investments for the Applicant’s spouse. The Applicant further states that her spouse is currently employed in the United States with sufficient income to support their family but would experience extreme financial hardship if he were to move to Vietnam because he would be unable to find work because he is a foreigner. As previously stated, the Applicant was born and raised in Vietnam and lived and worked there prior to his emigration to the United States. Other than their assertions, the Applicant and her spouse have not established that he would be considered a “foreigner” under the Vietnamese labor code.

Even considering all of the evidence in its totality, the record remains insufficient to show that the Applicant’s spouse’s claimed financial, emotional, and medical hardships would be unique or atypical, rising to the level of extreme hardship, if he remains in the United States while the Applicant lives abroad due to her inadmissibility, or if he were to relocate and they live together in Vietnam.

We acknowledge that the Applicant’s spouse would experience hardship, including emotional hardship, upon separation from the Applicant. However, even considering the evidence in its totality, she has not established her eligibility for a waiver under section 212(i) of the Act, as the evidence of record does not show that the claimed hardship to her spouse would go beyond the common results of denial of admission to the United States and amount to extreme hardship. As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to her spouse both upon separation and relocation to Vietnam. As the Applicant has not established extreme hardship to her spouse in the event of separation or relocation, we cannot conclude that she has met this requirement. Because the Applicant has not demonstrated extreme hardship to a qualifying relative if she is denied admission, we need not consider whether she merits a waiver in the exercise of discretion. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.