



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

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

In Re: 24330684

Date: MAR. 13, 2023

Appeal of San Jose, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, who has requested to adjust status to that of a lawful permanent resident, seeks a waiver of inadmissibility for fraud or misrepresentation under 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 waiver as a matter of discretion if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. *Id.*

The Director of the San Jose, California Field Office, denied the application, concluding that the record evidence did not establish extreme hardship to the Applicant's only qualifying relative, his U.S. citizen spouse, if the Applicant is denied admission. On appeal, the Applicant submits a brief and additional evidence and reasserts that his spouse would experience medical, financial, and emotional difficulties that would amount to extreme hardship if the Applicant is refused admission.

The Applicant has the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *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.

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). This inadmissibility ground 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 noncitizen. Section 212(i) of the Act. If the noncitizen establishes the requisite hardship, they must also show that their waiver request warrants a favorable exercise of discretion. *Id.*

Whether a 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, the hardship must exceed that which is usual or expected for it to be considered "extreme." *See, e.g., 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. Establishing 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. 9 *USCIS Policy Manual* B.4(B), <https://www.uscis.gov/legal-resources/policy-memoranda>. Here, the Applicant’s U.S. citizen spouse clearly indicates that she intends to remain in the United States if the waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship upon separation.

II. ANALYSIS

As an initial matter, the record supports the Director’s undisputed determination that the Applicant is inadmissible under 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation, necessitating a waiver application under section 212(i) of the Act.¹ The only issue before us is whether the Applicant has established extreme hardship to his qualifying relative if the waiver request is denied.

The Director determined that the record evidence of the claimed difficulties to the Applicant’s spouse did not individually or collectively show that she would experience extreme hardship upon separation. In support of the waiver application, the Applicant submitted to the Director, among other documents, his and his spouse’s hardship statements; the spouse’s psychological evaluation; support letters from the spouse’s adult son and her mother; family drawings by her youngest child; the Applicant’s 2021 earnings statements for August and September; and family photographs. On appeal, the Applicant alleges error in the Director’s decision, specifically that the Director erred in incorrectly applying a more stringent hardship standard, improperly required evidence of the spouse’s ongoing mental health treatment, and did not consider the impact that the spouse’s past trauma will have on her mental health upon separation. He maintains that the evidence submitted below and on appeal demonstrates that if he is refused admission, his spouse would suffer extreme hardship due to her mental health conditions as well as related emotional and financial difficulties upon separation.

Upon our de novo review, the Applicant has not established the requisite extreme hardship to his spouse upon separation. The record reflects that the 34-year-old Applicant, a native and citizen of Tunisia, and his U.S. citizen spouse, who is now 40 years of age, have been married since [REDACTED] 2019. The spouse asserted before the Director that she struggled emotionally throughout her life and endured deplorable challenges in part due to her past abusive relationships and trauma, including losing her second child when her abusive ex-spouse (also of Tunisian descent) took the child to Tunisia in 2008

¹ The Applicant admits, and the record shows, that he misrepresented his marital status and foreign travel history during his nonimmigrant visa application process in September 2015.

without her permission. She stated that she relies heavily on the Applicant for emotional support in managing her mental and physical health and that her mental health will significantly deteriorate without the Applicant. The record before the Director also included a July 2021 psychological evaluation noting the spouse's past trauma, including physical and sexual abuse, and indicating that she has been diagnosed with and receives therapy for Post-Traumatic Stress Disorder (PTSD) and Major Depressive Disorder (MDD). The psychological evaluation also indicated that she has struggled with trust and relationship issues until she met the Applicant and his absence would devastate her. In his statement to the Director, the Applicant similarly stated that he provides critical emotional support to his spouse who also primarily relies on him financially. They further asserted in their statements that the Applicant provides other support for his spouse and that the spouse's two children, one of whom is now 24 years old, and her mother also relies on his support. Based on the foregoing, he claimed that without his presence and support for his spouse, she would suffer extreme hardship.

Contrary to the Applicant's assertions on appeal, the record does not establish error in the Director's decision or otherwise show that the Director incorrectly applied a heightened standard in assessing hardship. Rather, the record reflects that the Director properly considered all the relevant evidence, including evidence of her mental health diagnoses and past trauma, under the appropriate evidentiary standard in determining that the Applicant did not establish extreme hardship to his spouse.

We acknowledge, as did the Director, the evidence in the record indicating that the spouse was diagnosed with and is receiving therapy for PTSD and MDD and that she relies on the Applicant's general emotional support. However, the record before the Director—including the statements from the Applicant and his spouse and the psychological evaluation—did not delineate how the Applicant provides the needed emotional support and care for the spouse and the extent to which she relies on him in getting treatment and managing her conditions. Further, although they also stated that separation will retrigger the spouse's preexisting depressive symptoms and worsen her conditions, the record does not establish the severity or frequency of her mental health conditions and related symptoms to show they affect her ability to perform daily tasks, including her ability to work, such that she requires the Applicant's presence and assistance and that they would be aggravated by separation. Further, the psychological evaluation states that the spouse has been receiving weekly therapy since she married the Applicant, that her symptoms are "no longer as troubling or intense as they were," and that she is managing her emotional responses to conflict and deep anxieties. Although the evaluation also adds the Applicant was "instrumental" in helping with his spouse's self-esteem, as stated, the record does not otherwise detail how he assisted his spouse or how his assistance was and is necessary to maintain her mental health. Similarly, the record did not show that the spouse needs anyone's assistance in managing her type 2 diabetes or other health issues, as she self-administers her medication and did not claim that she specifically requires anyone's help. The record also does not indicate whether her adult son cannot provide her assistance in the Applicant's absence.

As to his spouse's financial hardship claim, the Applicant's 2021 paystubs did not demonstrate that he is the "primary breadwinner," particularly as the record showed that his spouse was earning income before and after they were married and absent other evidence of her financial reliance on the Applicant. Contrary to the Applicant's assertion that he is the primary provider, the record before the Director, including the couple's 2019 and 2020 tax returns, showed that the spouse was the sole income-earner in 2019 and that they were both working in 2020. Additionally, the spouse in her statement did not

address her financial dependence on the Applicant or provide information as to her own ability to earn income, and the record lacked sufficient corroborative evidence of potential financial hardship.

We also acknowledge the couple's assertions that the spouse's mother is in a wheelchair and the Applicant took her to the hospital when she had a medical emergency; that the spouse's children also look up to him as a positive role model and a father figure; and that he has taken the younger child to and from school as well as help with the child's reading. But beyond these assertions, the evidence before the Director, including the statements from the spouse's mother and adult son, did not delineate the Applicant's relationship with and support for the family members or show that the spouse and her adult son cannot independently manage their family's financial and physical needs without the Applicant's assistance. The Director thus determined, and we agree, that the evidence of hardship below did not individually or collectively show the requisite hardship to the spouse upon separation.

Further, the Applicant's new evidence on appeal pertaining to the hardship, considered cumulatively with the record as a whole, is insufficient to establish that the Applicant's spouse would experience separation hardship beyond that which is common or expected upon separation. The Applicant reiterates that his spouse will suffer physical, emotional, and financial hardship, in part due to the nonqualifying family members' difficulties in his absence, and the spouse's updated statement on appeal adds that when she was caring for her mother and that the Applicant helps with transportation and visits her mother when she needed company. The spouse also reiterates the past trauma she endured before she married the Applicant and generally asserts that he "plays a major role" in her limited support system by providing familial and emotional support for her, her two children, and her mother. However, apart from these general assertions, she provides no further details about the needs of her mother and children to show that she is unable to care for them without his support or show that her mental health would be so aggravated that she would be unable to care for her family and perform daily tasks and functions. The record on appeal also does not show that the spouse's adult son cannot help the spouse in the Applicant's absence. The Applicant also submits on appeal a one-page June 2022 letter from a therapist summarizing, at the spouse's request, her treatment record at a mental health facility. But this letter only indicates that she "began treatment" in March 2020, a year after their marriage, that the author of the letter "meet[s] with her weekly for individual therapy," and that the spouse periodically sees a psychiatrist "based on the need for evaluation and continued mental health services." This letter provides no other detail and does not mention the Applicant's involvement, if any, in the spouse's treatment. Moreover, while the initial psychological evaluation and the therapist's letter address the spouse's past trauma, her emotional reliance on the Applicant, and the potential emotional impact of separation, neither document indicates the spouse's treatment plan, discuss her prognoses, or otherwise show that she cannot continue to seek treatment and manage her conditions without the Applicant.

The Applicant reasserts on appeal that his spouse needs his help to pay the bills and submits the couple's monthly expenses sheet and a 2021 lease agreement (covering January 2021 to November 2021), bills for utility and cellphone services, evidence of auto and renter's insurance, and other financial documents—including for his separate loans with two different banks, his own credit card bill with another bank, and the spouse's separate credit card bills with four different banks. However, while we acknowledge the Applicant's evidence showing that his spouse will suffer financial loss if the Applicant's is refused admission, he has not shown that the resulting hardship is beyond the common or typical results of removal. As stated, the record reflects that the spouse is

employed and was the sole income-earner on the couple's 2019 tax returns, her paystubs for August 2022 on appeal indicate that she is still employed, and the remaining evidence on appeal does not establish that she is otherwise unable to work or support her family. The record also does not show that the spouse's mother or adult son require her financial support or that her adult cannot assist her financially in the Applicant's absence. The record also does not indicate whether the 34-year-old Applicant with a business degree and years of work experience would be unable to obtain a job and support his family from overseas while maintaining emotional ties.

The Applicant also asserts on appeal that separation will worsen the spouse's health and her ability to work due to stress related to the Applicant's potential hardship in Tunisia where adverse conditions exist. We acknowledge his statements in the record describing his past difficulties obtaining employment in Tunisia. However, neither the Applicant and his spouse's statements nor the remaining evidence, including three news articles on appeal regarding constitutional crisis and hostility towards journalists, further address his claim that he would be unable to find employment or discuss any difficulties he may experience in Tunisia that may in turn affect his spouse emotionally. The remaining appeal evidence does not specifically relate to the spouse's hardship or provide pertinent information that would otherwise establish the requisite extreme hardship to the spouse.

We acknowledge that the spouse would experience hardship upon separation from the Applicant. However, even considering the evidence in its totality, the Applicant has not shown that the claimed hardship to the spouse upon separation would go beyond the common results of removal and rise to the level of extreme hardship. Because the Applicant has not established extreme hardship to a qualifying relative if he is denied admission, we need not reach whether his waiver request warrants a favorable exercise of discretion. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.