



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

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

In Re: 22794384

Date: MAY 15, 2023

Appeal of Los Angeles, California Field Office Decision

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

The Applicant, a native and citizen of China, has applied to adjust status to that of a lawful permanent resident (LPR). The Applicant 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 misrepresentation.

The Director of the Los Angeles, California Field Office denied the application, concluding that the record did not establish that the Applicant's U.S. citizen spouse would suffer extreme hardship if the Applicant were removed from the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3. The Applicant argues on appeal that the Director did not consider all evidence of hardship to all qualifying relatives, including the Applicant's U.S. citizen mother and LPR father.

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

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 United States 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).

Once the noncitizen 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 noncitizen 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).

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 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. 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>. In the present case, the record is unclear as to whether the Applicant's spouse and parents would remain in the United States or relocate to China if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse and parents would experience extreme hardship both upon separation and relocation.

II. ANALYSIS

The Applicant does not contest his inadmissibility, as described in the Director's decision, which we incorporate here. The Applicant and his spouse met in August 2014, shortly after both came to the United States from China, and they married in [REDACTED] 2019. They have resided together since 2015, along with the spouse's U.S. citizen son from a prior marriage. During that time, letters from the Applicant's spouse's doctor and treatment records indicate the spouse suffers from Hepatitis B, high cholesterol, and kidney stones and has a history of mental health conditions, including insomnia, anxiety, and depression. Letters from the Applicant and his spouse indicate he cares for his spouse, providing additional income by working overtime as often as possible to allow her to not work due to her medical and mental health conditions. Additionally, the Applicant's elderly parents – his U.S. citizen mother and LPR father – live with the Applicant and his spouse and state that they rely on him for assistance, both financially and with daily activities, as they both have health concerns. In his affidavit, the Applicant explains that he takes his parents to their doctors, the bank, and church, as well as reminds them to take their medications, provides for them financially, and engages in traditional Chinese healing practices for them.

The Applicant concurrently filed his waiver application and a Form I-485, Application to Adjust Status. The Director denied the waiver application because the Applicant did not establish his U.S. citizen spouse would suffer extreme hardship if he were denied admission to the United States. In

denying the waiver application, the Director did not make a determination as to whether the Applicant merited a favorable exercise of discretion.

On appeal, the Applicant argues the Director erred in finding he had failed to establish his qualifying relatives would experience extreme hardship if his waiver application were denied. Specifically, the Applicant cites the hardship his U.S. citizen mother and LPR father would suffer, in addition to the hardship his U.S. citizen spouse would experience.

With the Form I-601, the Applicant submitted substantial evidence of hardship to his three qualifying relatives: affidavits from each, as well as from his spouse's U.S. citizen son and U.S. citizen mother-in-law; affidavits from friends; lab results and medical reports regarding the Applicant's spouse; a psychological evaluation of the Applicant's spouse; doctor's visits summaries for the Applicant's parents; tax returns; a household budget worksheet; rent agreements and receipts; car insurance bills; telephone bills; internet bills; utilities bills; bank statements; and articles on country conditions in China. The record indicates that in addition to helping his spouse with maintaining her diet and daily exercise to improve her medical conditions, the Applicant aids his elderly family members. In his affidavit, the Applicant describes the care he provides for his elderly parents, who live with him, his spouse, and his adult stepson. The affidavits from the Applicant, his spouse, and family members indicate the Applicant also helps his spouse care for her elderly U.S. citizen mother, including delivering food to his mother-in-law when she was hospitalized in March 2020. Medical records show the Applicant's LPR father suffers from high blood pressure, conjunctivitis, high cholesterol, esophagitis, and osteoporosis, and the Applicant's U.S. citizen mother indicated in her affidavit that she suffers from high blood pressure, coronary artery disease, and conjunctivitis, which is also confirmed by additional medical records. Both the Applicant and his mother noted in their affidavits that she has had multiple surgeries in recent years, including on a lymph node in her chest and on an eye. Affidavits from the Applicant and his spouse state that the Applicant massages his 74-year-old father's legs when he experiences severe pain in them, buys vitamins and supplements for his parents, and drives them to a park to take walks with them.

In denying the waiver application, the Director did not consider the hardship to the Applicant's parents themselves; rather, the Director considered the difficulties they would face without the support of the Applicant only insofar as it would contribute to the hardship faced by the Applicant's spouse. Thus, the Director failed to consider the hardship to each parent and to the three qualifying relatives, both individually and in the aggregate. *See Ige*, 20 I&N Dec. at 882.

Upon review of the record, we conclude the Applicant has established his three qualifying relatives would suffer extreme hardship if they remain in the United States, separated from the Applicant. The record indicates that the Applicant's 45-year-old spouse relies on him for assistance with numerous daily tasks and that the Applicant takes his spouse to doctor appointments and prepares her medication. The psychological evaluation from [REDACTED] indicates that the Applicant's spouse has suffered from severe mental health symptoms, including hallucinations and suicidal ideation, triggered by past traumatic experiences, such as the death of her father in 2006 and her prior marriage to an abusive spouse. The evaluation further notes the Applicant's spouse has experienced a decrease in symptoms of her mental health conditions while living with the Applicant; however, upon receiving a notice of intent to deny (NOID) related to the Form I-601, she experienced an exacerbation of her symptoms, resulting in a diagnosis of major depressive disorder (recurrent and severe without

psychotic features) and generalized anxiety disorder. The Applicant's spouse also acknowledged, in her affidavit, that the stress of the NOID had an impact on her performance at work and necessitated a break at the advice of her doctor. The psychological evaluation includes a finding that the Applicant's spouse is at an increased risk of psychological and emotional deterioration with a high likelihood of leading to suicidal ideation if the Applicant were removed from the United States and the couple were separated. As treatment for her ongoing symptoms, the psychological evaluation recommends the Applicant's spouse receive "outpatient mental health services on a monthly or bi-weekly basis." In her affidavit, the Applicant's spouse noted the couple has difficulty affording the cost of her mental health care, and she expressed doubt that she would be able to continue to pay for psychological care without the Applicant's income, thus increasing the likely impact of separation on her mental health.

Further, the Applicant's parents would lose the support of their son, who provides daily assistance and helps them attend medical appointments. Medical records for the Applicant's mother indicate she suffers from hypertension, coronary artery disease, conjunctivitis, and osteoarthritis. Medical records for the Applicant's father indicate he suffers from esophagitis, hypertension, osteoporosis, coronary artery disease, and hypercholesterolemia. The Applicant's father also notes in his affidavit that he has diabetes and severe arthritis. The Applicant's mother explained in her affidavit that she and her husband are unable to live with their daughter, who lives in the United States, because her household communicates exclusively in English and consumes a "very westernized" diet. Neither of the Applicant's parents speaks English, and neither is used to eating anything apart from traditional Chinese cuisine. The Applicant's father also noted that when he and his wife lived with their daughter, she was too busy to help them get to and from doctor appointments, the bank, and stores. He explained the lack of her support resulted in them needing to take the bus, which has become impossible as their health conditions have deteriorated with advancing age. After his parents moved in with the Applicant, he took over providing transportation to his parents, taking them to appointments and stores as needed. Neither of the Applicant's parents have a driver's license, so they would be unable to drive themselves places without him. The Applicant's father further stated in his affidavit that the Applicant and his spouse prepare food that supports a healthy diet to help with high cholesterol and diabetes. In her affidavit, the Applicant's spouse explained how the Applicant's parents' health conditions have deteriorated from the stress and anxiety caused by the fear of their son possibly being removed from the United States.

Financially, the Applicant's spouse, despite previously working full-time, did not earn enough to meet the demands of the household, including providing a high level of assistance to the Applicant's elderly parents, as evidenced by the tax returns and household budget sheet. The Applicant's spouse noted in her affidavit that the Applicant's parents do receive a pension and Social Security benefits; however, the combined total would not even be enough to cover the household's mortgage payment, much less make up for the loss of the Applicant's income. As such, not only would the Applicant's spouse suffer financial hardship if they were separated, his parents – his 73-year-old mother and 74-year-old father who are also qualifying relatives – likewise would experience financial hardship. Similarly, the Applicant's spouse would have difficulty continuing to provide the same level of financial assistance to her own U.S. citizen mother. Such difficulty would add to both the financial and emotional stress she would suffer upon separation. The Applicant's spouse indicated in her affidavit that her doctor had advised her to cease working for at least six months to allow her body to heal. The Applicant's mother stated in her affidavit that the Applicant's spouse stopped working in part due to her mental

health condition and the impact it had on her work, and she had not yet returned to work. In her affidavit, the Applicant's spouse acknowledged the break has been helpful, but she fears the decline in her physical condition that would occur if she had to return to working full time. While the Applicant's adult stepson could possibly contribute more income to the household, the household budget the Applicant provided along with tax returns shows the family's current monthly expenses exceed the total household income, including the Applicant's full-time salary and his stepson's part-time earnings. Therefore, it is unlikely, even if employed full-time, the Applicant's stepson would be able to make up for the loss of the Applicant's income in addition to his own part-time earnings. The Applicant's spouse stated in her affidavit that the costs of caring for their elderly family members is likely to increase in the coming years, and even at the current level, she would not be able to meet the financial demands of their care. She further said her son has lost his part-time job due to the pandemic, making it even less likely he would be able to help her make up for the loss of the Applicant's income. In the psychological evaluation, it is documented that the Applicant's wife expressed a fear that she would have to help support her husband in China, which she would not reasonably be able to do given her need for his support to meet their expenses in the United States, and the Applicant would not be able to provide any financial assistance if she remained in the United States and he returned to China.

Further, after a thorough review of the evidence in this case, we conclude the Applicant has established his three qualifying relatives would suffer extreme hardship if they relocated to China with the Applicant. The Applicant's spouse has a history of suffering from severe mental health symptoms while living in China previously, including hallucinations and suicidal ideation. She has expressed great fear and apprehension about returning to the place where she suffered extreme abuse from her previous husband, and country conditions evidence in the record shows a lack of psychiatrists in China, making it less likely the Applicant's spouse would continue receiving the mental health support and care she needs. The Applicant and his spouse stated in their affidavits that they would have difficulty finding employment sufficient to sustain their family in China, which would include his elderly parents. In her affidavit, the Applicant's spouse explained she and her husband lack the requisite education to be competitive for employment in China, noting the negative impact the pandemic has had on the job market in China. Further, she stated it would be very difficult to find a home without connections in China, where she and the Applicant no longer have any ties. Both the Applicant and his spouse expressed concerns in their affidavits over the likelihood that their family would be homeless upon return to China due to the difficulties they believe they would face finding housing and employment. The Applicant's parents have lived in the United States for many years and as such, have lost ties to their former community in China. They stated in their affidavits that it is unlikely they would be able to work or rely on any other support network if they relocated with the Applicant, and they would therefore suffer considerable financial and emotional hardship as they would be fully reliant on the Applicant to provide for them. The Applicant's mother additionally noted in her affidavit that as a U.S. citizen, she would not be able to live in China anymore, and she would need a visa to temporarily visit China. Thus, it would not be likely she could accompany her family to China, which she fears would result in her separation from not only her son but also from her husband and daughter-in-law.

III. CONCLUSION

The Applicant has established his qualifying relatives would suffer extreme hardship if they were separated from the Applicant, as well as if they were to relocate to China with the Applicant. The

Director did not previously make a determination about whether the Applicant established he merited a grant of his application as a matter of discretion. As such, based on the foregoing analysis, we will withdraw the Director's decision and remand for a complete decision on the exercise of discretion.

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