



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

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

MATTER OF Y-E-M-

DATE: AUG. 21, 2017

APPEAL OF ORLANDO, FLORIDA FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Jamaica currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A foreign national 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 may grant this discretionary waiver to self-petitioners under the Violence Against Women Act (VAWA) if refusal of admission would result in extreme hardship to the self-petitioner or to a qualifying relative or qualifying relatives.

The Director of the Orlando, Florida Field Office denied the waiver application. The Director concluded that the Applicant was inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The Director then determined that the Applicant had not established that denial of admission would result in extreme hardship to her son.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and asserts that the Director erred by not considering the extreme hardship that she, as a VAWA self-petitioner, would experience if the waiver is denied.

Upon *de novo* review, we will sustain the appeal.

I. LAW

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, 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 in the case of a VAWA self-petitioner if the self-petitioner demonstrates that refusal of admission would result in extreme hardship to the self-petitioner or to his or her United States citizen, lawful permanent resident, or qualified alien parent or child. Section 212(i) of the Act.

Decades of case law have contributed to the meaning of extreme hardship. The definition of extreme hardship “is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists “only in cases of great actual and prospective injury.” *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was “no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects”). The common consequences of removal or refusal of admission, which include “economic detriment . . . [.] loss of current employment, the inability to maintain one’s standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment,” are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); but see *Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which the qualifying relatives would relocate). Nevertheless, all “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

II. ANALYSIS

The issues on appeal are whether the Applicant and her son would experience extreme hardship if the waiver is denied and if so, whether she merits a favorable exercise of discretion. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record, which establishes that the Applicant entered the United States in 2001 with a fraudulent passport and visa. The claimed hardships to the Applicant are emotional, medical, and financial hardship. The claimed hardship to the Applicant’s son is emotional hardship.

In support of the application, the Applicant submitted medical records, tax documentation, financial records, employment documentation, support letters, and country conditions information. The entire record was reviewed and considered in rendering this decision.

The evidence in the record establishes that the Applicant and her son would experience extreme hardship if the waiver is denied. We also find that the Applicant merits a waiver as a favorable exercise of discretion.

A. Waiver

As the beneficiary of an approved VAWA self-petition, the Applicant must demonstrate that denial of the application would result in extreme hardship to herself or to her LPR son. The record reflects that the Applicant is 55 years old and that she has one child, an adult son. The record also reflects

that the Applicant earns \$8,500 per year and that her housing is provided by her employer, an assisted care facility. The Applicant states that she suffers from hypertension, chronic recurring pelvic pain due to multiple ovarian cysts, chronic bilateral knee pain with degenerative joint disease, and nonspecific chest pain. The Applicant maintains that if she relocates to Jamaica, she will be unable to obtain employment given her age and medical conditions. She further maintains that she would be unable to afford medical care and her medications. She states that she would also experience emotional hardship from being separated from her only child. In addition, the record reflects that the Applicant's son would experience emotional hardship being separated from his mother. The record further reflects that the Applicant's son would experience emotional hardship knowing that his mother was forced to relocate to Jamaica where his father, who abused him and his mother, currently resides.

We find that the Applicant would experience extreme hardship if she relocated to Jamaica. The record reflects that the Applicant has lived in the United States for 17 years and that separation from her son would result in emotional hardship. In addition, documentation in the record corroborates the Applicant's medical diagnoses and indicates that her medical conditions require ongoing monitoring and treatment. The evidence in the record therefore establishes that relocating to Jamaica would disrupt the continuity of the Applicant's medical care and require her to find adequate medical facilities and treatment without the financial means and health insurance that her current employment affords her. The record reflects that the Applicant would suffer financial hardship due to loss of income and the inability to obtain employment. The record also demonstrates that the Applicant's son would experience emotional hardship being separated from his mother and knowing that his mother was residing in close proximity to his father who previously abused her. We find that, cumulatively, these concerns go beyond the usual or typical results of removal or inadmissibility and represent hardships that rise to the level of extreme hardship.

Based on a totality of the circumstances, we find that the Applicant has established that she and her son would experience extreme hardship if the waiver is denied.

B. Discretion

We now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing the 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). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the foreign national and his or her family, service in

the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

In this case, the unfavorable factors are the Applicant's misrepresentation and unauthorized period of stay in the United States. The favorable factors include hardship to the Applicant and her LPR son, the Applicant's gainful employment in the United States, her lack of a criminal record, her payment of taxes, and support letters attesting to her good moral character. We find that when the favorable factors are considered together, they outweigh the unfavorable factors such that a favorable exercise of discretion is warranted.

III. CONCLUSION

The Applicant has demonstrated that she and her son would experience extreme hardship. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of Y-E-M-*, ID# 452675 (AAO Aug. 21, 2017)