



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

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

MATTER OF P-J-L-

DATE: DEC. 8, 2015

APPEAL OF MIAMI FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Honduras, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Director of the Miami, Florida Field Office denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on her behalf by her U.S. citizen spouse. In a decision dated, February 11, 2015, the Director found the Applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the country, and seeking to procure an immigration benefit, by fraud or the willful misrepresentation of a material fact. The Director determined that the evidence in the record was insufficient to establish that extreme hardship would be imposed on the Applicant's spouse if he remained in the United States or if he relocated with the Applicant to Honduras. In addition, the Director determined that the Applicant failed to establish that she merited a favorable exercise of discretion. The Form I-601 was denied accordingly.

On appeal, the Applicant asserts that the cumulative evidence in the record demonstrates that her spouse would experience extreme hardship if she is denied admission and he either remains in the United States or relocates with her to Honduras. In addition, the Applicant asserts that the evidence establishes that a favorable exercise of discretion is merited in her case.

The Applicant cites to non-precedent AAO decisions to support the assertion that her spouse will experience extreme hardship if she is denied admission into the country. We note that while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Further, each application is a separate proceeding with a separate record. 8 C.F.R. § 103.2. In making a determination of statutory eligibility, we are limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii). Here, the record includes, but is not limited to, affidavits from the Applicant and her spouse; financial evidence; country conditions information; evidence relating to the Applicant's children; and documentation establishing relationships and identity. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

Any alien 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 this chapter is inadmissible.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation, and states:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that on November 19, 2000, the Applicant used a passport and tourist visa containing the name of another person to gain admission into the United States. The Applicant indicates in a July 8, 2014 affidavit, however, that she was 16 years old when she used the passport and tourist visa, she was accompanied by one of her parents' friends at the time, and she did not understand what she was doing. The Applicant provides no additional information or evidence to corroborate her assertions.

In the immigration context, a finding of fraud requires that an individual "know the falsity of [her] statement, intend to deceive the Government official, and succeed in this deception." *In re Tijam*, 22 I&N Dec. 408, 424-25 (BIA 1998). Willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. *See Parlak v. Holder*, 57 F.3d 457 (6th Cir. 2009) (citing to *Witter v. INS*, 113 F.3d 549, 554 (5th Cir. 1997); *see also Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995). "The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary." *Mwongera v. INS*, 187 F.3d 323, 330 (3d Cir. 1999). In the present matter, the record contains insufficient evidence to demonstrate that the Applicant was unaware that she was presenting documentation containing the name of another individual when she entered the United States. Further, although the Applicant was a minor when she gained admission with the passport and tourist visa, we find that she was old enough to know better and to be held accountable for her actions. *See Malik v. Mukasey*, 546 F.3d 890, 892 (7th Cir. 2008).

Upon review, the record contains insufficient evidence to overcome the finding that the Applicant was aware that she presented a passport and tourist visa containing the name of another individual when she entered the United States, and that her presentation of this documentation was voluntary and deliberate. Accordingly, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact to gain admission into the United States.

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The Applicant stated on a Form I-821, Application for Temporary Protected Status, filed on July 12, 2007, that she entered the United States without inspection in November 1998 at [REDACTED] Texas. The Applicant does not contest that she misrepresented her manner of entry into the country on the above applications. She is therefore also inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for attempting to procure an immigration benefit by willful misrepresentation of a material fact.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The record establishes that the Applicant's U.S. citizen spouse is the only qualifying relative in this case. The record contains references to hardship that the Applicant's children would experience if the waiver application were denied; however, hardship to the Applicant's children will not be separately considered, except as it may affect the Applicant's spouse. Hardship to the Applicant can also be considered only insofar as it results in hardship to her qualifying relative. If extreme hardship to a qualifying relative is established, the Applicant is statutorily eligible for a waiver, and we then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives 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 they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir.1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

We will first address hardship if the Applicant’s spouse remains in the United States without the Applicant. The Applicant’s spouse states in a July 8, 2014 affidavit that he and the Applicant married young, the Applicant was 19 and he was 23, and that they have been married for over 12 years. He states that they have two children and that he and their children would be devastated if they were separated from one another. He indicates that their children’s reactions would affect him emotionally. He indicates further that he would fear for the Applicant’s safety in Honduras, and would also fear for their children’s safety if they moved to Honduras with the Applicant. The Applicant’s spouse states that he is the only income earner in their family and that the Applicant takes care of their children and their home while he works. He indicates that he would need to continue working full-time and would be unable to spend much time with their children if they remained in the United States, which would cause him additional emotional hardship. He also indicates that he would experience financial hardship if the children remained in the United States because he would have to pay for childcare services in the Applicant’s absence.

The Applicant adds, in a July 8, 2014 affidavit, that her spouse would become depressed if he were separated from her. In addition, she indicates that they would probably lose their home because her spouse would struggle financially to support himself, their children, and her in Honduras.

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Marriage and birth certificate evidence reflects that the Applicant and her spouse were married on [REDACTED] 2003, and that they have an 11-year-old U.S. citizen daughter, born on [REDACTED] and a two-year-old U.S. citizen son, born on [REDACTED]. A letter from their children's doctor indicates that the Applicant is very involved in her children's healthcare and life. The record also contains employment and federal income tax information corroborating that the Applicant's spouse is the sole financial provider in their family, that he has been employed as a warehouse supervisor since 2011, and that he earned \$38,000 in 2013. Home mortgage information reflects that the Applicant and her spouse purchased a home in 2010.

U.S. Department of State country conditions evidence reflects further that travel warnings have been issued for Honduras; the level of crime and violence is critically high and Honduras has the highest murder rate in the world; kidnappings and disappearances are an ongoing concern, and rape and violence against women is a serious and pervasive societal problem; and the Honduran government lacks the resources to address these issues.

Upon review, the cumulative evidence in the record is sufficient to establish that the Applicant's spouse would suffer hardship beyond that normally experienced upon inadmissibility of a family member if he remains in the United States separated from the Applicant. In addition to the emotional hardship that the Applicant's spouse would experience due to his separation from the Applicant, the evidence demonstrates that he would experience emotional hardship if their children returned to Honduras with the Applicant. The Applicant's spouse would also experience emotional hardship based on their children's reactions to a separation from their mother or their father. In addition, the evidence demonstrates that if the children remained in the United States, the Applicant's spouse would need assistance caring for them, causing financial hardship. Further, country conditions evidence corroborates the Applicant's spouse's fears for the Applicant's and his children's safety in Honduras. Considered in the aggregate, the Applicant has demonstrated that the cumulative effect of the hardships that her spouse would experience if he remained in the United States rise to the level of extreme hardship.

With regard to hardship upon relocation to Honduras, the Applicant's spouse asserts that he has never lived outside of the United States; his parents, sister and brother live in this country; and he and the Applicant have no family in Honduras. He also states that his job and his family home are in the United States, he expresses fear for his family's safety in Honduras, and he indicates concern that their children would get an inferior education in Honduras.

The evidence in the record corroborates that the Applicant's spouse is from the United States, is a homeowner in this country, and has been working at a stable job for many years. Further, country conditions evidence contained in the record corroborate safety-related concerns for the Applicant's spouse and his family in Honduras. The country conditions evidence also reflects that education facilities and opportunities in Honduras are inferior to those in the United States. Based on the Applicant's spouse's family and financial ties to the United States, his lack of ties to Honduras, safety issues in Honduras, and hardship to his children, we find that the Applicant's spouse would experience extreme hardship he relocated to Honduras.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299.

In evaluating whether section 212(a)(6)(C)(i) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if she is excluded and deported, service in this country'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 the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *See Matter of Mendez-Moralez* at 301.

The Board further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that she merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The unfavorable factors in this case are the Applicant's use of a passport and nonimmigrant visa in the name of another person to gain admission into the United States in November 2000; the Applicant's misrepresentations regarding the date and manner of her entry on her July 2007 temporary protected status application; and her unauthorized stay in the United States.

The favorable factors are the extreme hardship that the Applicant's U.S. citizen spouse would face if the Applicant were denied admission into the country; statements attesting to the Applicant's good character and her explanation and remorse for her immigration violations; the Applicant's lack of a criminal record; and the number of years that have passed since her immigration violations occurred. Upon review, we find that the favorable factors in this case outweigh the unfavorable factors, such that a favorable exercise of discretion is warranted.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

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ORDER: The appeal is sustained.

Cite as *Matter of P-J-L-*, ID# 14056 (AAO Dec. 8, 2015)