



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

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

MATTER OF G-G-G-K

DATE: DEC. 10, 2015

APPEAL OF LOS ANGELES FIELD OFFICE DECISION

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

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

The Director determined that the Applicant was inadmissible for fraud or willful misrepresentation. The Director concluded that the Applicant had not established that denial of her application would result in extreme hardship to her U.S. citizen spouse. The Form I-601 was denied accordingly.

On appeal, the Applicant submits a brief, declarations, a handwriting examination report, e-mails regarding a notary public commission, articles regarding an immigration scam, country condition information, a Freedom of Information Act request and response, financial documents, and medical records. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act states:

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 Act is inadmissible.

Section 212(i) of the Act further provides:

- (1) The [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.

With respect to the Director's finding that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud and misrepresentation, in her November 28, 2014, declaration the Applicant admits that she paid around \$10,000 to an individual for the purposes of filing an employment-based application on her behalf. She notes that she provided copies of her passport, birth certificate, school records, and medical examination for the submission. She further admits that in October 2002, she went to a scheduled appointment at the Immigration and Naturalization Service Office, where she had her fingerprints taken, signed a form, and was issued an employment authorization card.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the Applicant's misrepresentations were material if either the Applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

The Applicant had the duty and the responsibility to review the immigration documentation submitted on her behalf, and all supporting documentation prior to submission, irrespective of who she had retained to process the application on her behalf, to ensure it was true, accurate, and authentic. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The Applicant therefore remains inadmissible under section 212(a)(6)(C) of the Act for fraud or willful misrepresentation.

A waiver of inadmissibility under section 212(i) of the Act is dependent on 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. Hardship to the Applicant or her mother-in-law can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

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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. . . [,] and while an analysis of a given application includes a review of all claims put forth in light of the facts and circumstances of a case, such analysis does not extend to discovery of undisclosed negative impacts.” *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). 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); *see also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship). 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).

In his declaration, the Applicant’s spouse asserts that he will experience extreme hardship if he remains in the United States while the Applicant relocates abroad as a result of her inadmissibility. He declares that the Applicant has emotionally supported him in coping with psychological trauma that he experienced in Iran, and he has increasing anxiety that she will be permanently separated from him. He further asserts that he wants to start a family but has not been successful due to fertility issues. He declares that if the Applicant were to reside abroad, long-term separation will destroy his marriage and chance to have a family. The Applicant’s spouse further contends that he works full-time but is reliant on the Applicant’s income to meet all financial obligations and to help him support his elderly mother. He also asserts that he will not be able to afford to visit the Applicant abroad.

In support of his emotional and financial hardship claim, the Applicant provided financial documentation establishing the importance of the Applicant’s income to the household’s finances, evidence establishing the Applicant’s spouse’s mother’s medical conditions and the role the Applicant and her spouse play in her care and well-being, and documentation establishing the Applicant’s spouse’s medical and mental health issues, including an enhanced risk of depression due to his personal and family history. Based on a totality of the circumstances, the record establishes that the Applicant’s spouse will experience extreme hardship if he remains in the United States while the Applicant relocates abroad.

Regarding relocating abroad due to the Applicant’s inadmissibility, the Applicant’s spouse asserts that he feels safe in the United States, and fears he will be in danger in [REDACTED] which is his spouse’s hometown and where he will relocate with her. He further contends that he was born in Iran and has lived for over 20 years in the United States and thus has no ties to the Philippines. In addition, the Applicant’s spouse asserts that he will be forced to give up his job, which he has had for 20 years, and he is worried that he will not be able to find a job in the Philippines because he is over 40 and does not speak the language. The Applicant’s spouse also contends that he suffers from gout and the Applicant takes insulin for uncontrollable diabetes, and he is concerned that in the

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Philippines, he and his spouse will not be able to obtain affordable and effective treatment for their conditions. The Applicant's spouse also maintains that his mother relies on him and the Applicant on a daily basis and he will be worried that his mother will not have the same support from other family members, thereby causing him hardship.

The Applicant has submitted evidence establishing that the U.S. Department of State has issued a Travel Warning for the Philippines and warns against all but the most essential travel to [REDACTED]. The Applicant has also provided evidence regarding her treatment for diabetes and her husband's treatment for gout. The record establishes that the Applicant's spouse was born in Iran and is unfamiliar with the country, culture, customs and language in the Philippines. In addition, the record establishes that the Applicant's spouse has lived in the United States for over two decades and long-term separation from his community, his synagogue, his extended family, and the job which he has held for 20 years, will cause him considerable hardship. When the evidence is considered together, the record establishes that the Applicant's spouse will experience extreme hardship if he relocated abroad with the Applicant.

The Applicant has established that the bar to admission would result in extreme hardship to her qualifying relative spouse. We now turn to a consideration of 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. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 299 (BIA 1996). We must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf 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). In evaluating whether to favorably exercise discretion,

the factors adverse to the alien include the nature and underlying circumstances of the exclusion 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, recency 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 he 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).

Id. at 301 (citations omitted). We must also consider "[t]he underlying significance of the adverse and favorable factors." *Id.* at 302. For example, we assess the "quality" of relationships to family, and "the equity of a marriage and the weight given to any hardship to the spouse is diminished if the

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parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed].” *Id.* (citation omitted).

The favorable factors in this matter are the extreme hardship the Applicant’s spouse and mother-in-law would face if the waiver application were denied, the Applicant’s community ties, the numerous letters in support of the Applicant, the payment of taxes, gainful employment in the United States as a pharmacist, certificates issued to the Applicant for participating in continuing education courses, and the Applicant’s apparent lack of a criminal record. The unfavorable factors in this matter are the Applicant’s fraud or willful misrepresentation, as outlined in detail above, and periods of unlawful presence and employment in the United States. In this case, when the favorable factors are considered together, they outweigh the adverse factors such that a favorable exercise of discretion is warranted.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility remains entirely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has met that burden.

ORDER: The appeal is sustained

Cite as *Matter of G-G-G-K-*, ID# 14503 (AAO Dec. 10, 2015)