



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

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

MATTER OF S-M-T-

DATE: APR. 5, 2016

APPEAL OF FAIRFAX, VIRGINIA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Jamaica, seeks a waiver of inadmissibility for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The USCIS Field Office Director, Fairfax, Virginia, denied the Form I-601. The Director concluded that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, specifically for filing a fraudulent asylum application. The Director then determined that the Applicant had not established extreme hardship to her qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that her U.S. citizen mother would experience extreme hardship if she remained in the United States without her or relocated to Jamaica.

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

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a fraud or misrepresentation, specifically for a fraud or misrepresentation. 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, 8 U.S.C. § 1182(i), provides, in pertinent part:

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 only issue presented on appeal is whether the Applicant's mother would experience extreme hardship if the waiver is denied, whether she remained in the United States without her or accompanied her to Jamaica.¹ The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.² Were she to depart or be removed from the United States, the Applicant claims her mother would experience extreme hardship under

¹ The record indicates that the Applicant also has a U.S. citizen father; however, he is not listed as a qualifying relative in the application and the record does not contain any documentation regarding hardship to the father.

² At her adjustment of status interview on November 18, 2014, the Applicant stated that she filed a fraudulent asylum application to obtain immigration benefits.

either scenario. The claimed hardship to the Applicant's spouse from separation is emotional, medical, and financial hardship. The asserted hardship from relocation is physical hardship from inadequate healthcare, separation from family in the United States, and the inability to obtain employment.

In support of her claim, the Applicant submitted the following evidence. With the Form I-601, the Applicant submitted statements from the Applicant's mother, medical records, financial records, information about anxiety disorders and depression, country-conditions information on Jamaica, and a letter from a licensed clinical social worker dated April 1, 2015. On appeal, the Applicant resubmits her mother's medical records and the letter from the licensed clinical social worker. The entire record was reviewed and considered in rendering this decision.

The evidence in the record, considered both individually and cumulatively, does not establish that the Applicant's mother would experience extreme hardship. The record does not contain sufficient evidence to establish the hardship claimed or demonstrate that it is extreme. Because there is no showing of extreme hardship, we will not address whether the Applicant merits a waiver as a matter of discretion.

A. Waiver

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case her mother.

The Applicant claims that if her mother remains in the United States without her, she will suffer financial, emotional, and medical hardship. As to financial hardship, the Applicant's mother asserts that the Applicant assists her financially. She states that she lives in Florida and the Applicant lives in Virginia. The Applicant submitted a few of her mother's telephone, medical, utility and cable bills; bank and credit card statements; and wage statements to establish that her mother needs financial assistance. However, the record contains a letter from her mother's employer stating that she is gainfully employed as a certified nursing assistant. The record also contains a property deed reflecting her mother's homeownership. Although the Applicant has provided some documents showing her mother's living expenses and financial obligations, they do not demonstrate that her mother's monthly income is not enough to cover her household expenses and liabilities. Moreover, the Applicant's mother appears to live alone and although the Applicant claims to assist her mother financially, she has not submitted documentation of her financial contributions to her mother. Therefore, we determine that the record does not support a finding of financial hardship if the Applicant's mother remains in the United States.

As for emotional and medical hardship, the Applicant's mother asserts that she cannot imagine being without the Applicant's guidance and support. Her mother asserts that although she lives in Florida and the Applicant lives in Virginia, they see each other four times a year and talk to each other on a daily basis. The Applicant's mother declares that she takes medicine for diabetes, high blood pressure, glaucoma, and anxiety and expects her health to worsen over time and plans to soon retire and move in with the Applicant so she can take care of her. The Applicant's mother maintains that

the Applicant currently assists in managing her medical needs but she does not describe the assistance provided. Her mother states that she would be distressed her if the Applicant relocates to Jamaica, where she would have no family support and not be able to obtain employment. The Applicant's mother also declares that the Applicant recently developed diabetes and would be unable to obtain medicine for her condition in Jamaica. The Applicant's mother states that she worries that the Applicant's child would not receive a proper education in Jamaica due to his learning disability.

Regarding the medical and emotional hardship referenced, the Applicant submitted medical records establishing that her mother had cataract surgery and has diabetes, hyperlipidemia, a finger infection, hypertension, obesity, and allergic rhinitis. The Applicant also submitted an April 1, 2015 letter from a licensed clinical social worker which states that the Applicant's mother looks to the Applicant as the only one of her children willing or able to look after her as she ages and worries that if the waiver is denied, the Applicant will not be able to take care of her in the future. The licensed clinical social worker further maintains that the Applicant's mother's physical ailments may worsen due from anxiety and depression about the Applicant being without a job and family support in Jamaica. As we noted above, the record establishes that the Applicant's mother lives alone and owns her own home and, despite her health conditions, is gainfully employed and able to support herself as a certified nursing assistant. The Applicant has not shown that her mother is unable to financially support herself. Furthermore, though we may consider prospective medical hardships such as the need of taking care of a family member, the record does not establish that the Applicant's mother is dependent on the Applicant and requires the Applicant to take care of her. This hardship is not sufficiently foreseeable to be given significant weight in our hardship analysis, though we have considered it collectively in the hardship analysis. *See Matter of Shaughnessy, supra.* Nor does the record establish that the Applicant's mother will not be able to visit the Applicant abroad or continue to maintain a relationship telephonically, which is their primary contact method. As for the Applicant's mother's concern about the Applicant's and her son's wellbeing in Jamaica, the Form G-325A, Biographic Information, contained in the record shows that the Applicant is gainfully employed as a licensed practical nurse (LPN). The record does not contain evidence demonstrating that she would be unable to obtain gainful employment in Jamaica. Nor does the record contain evidence establishing that the Applicant has diabetes. Taken together, the evidence does not show that the medical and emotional hardship would constitute extreme hardship.

Although the record reflects that the Applicant's mother would experience hardship in the Applicant's absence, it does not show that the hardship demonstrated, considered individually and cumulatively, rises to the level of extreme hardship.

Concerning relocation to Jamaica with the Applicant, the Applicant's mother asserts that moving to Jamaica is not an option for her because her health would be at risk from inadequate healthcare in Jamaica. The Applicant's mother also maintains that the Applicant would not be able to find gainfully employment as an LPN to support them, and that they have no ties to Jamaica or funds to start over. She states that she is currently the primary caretaker for her mother and does not want to relocate to Jamaica and leave her mother.

In support of the referenced hardship, the Applicant submits a 2013 Department of State Country Report on Human Rights Practices for Jamaica. The Applicant also references a World Health Organization (WHO) publication, "Health in the Americas, 2012 Edition." This documentation does not support the assertion that the Applicant's mother could not obtain suitable medical care. The WHO report states that Jamaica has broad availability of health care in the public sector through a network of primary, secondary, and tertiary care facilities. The report also states that although affordability is a challenge, the National Health Fund/Jamaica Drugs for the Elderly Programme (NHF/JADEP) provides benefits and services for individuals in the form of direct assistance. The report further states that NHF subsidizes over 800 prescription drugs and JADEP provides 72 drugs, free of charge, to persons over 60 years of age who suffer from any of 10 chronic illnesses, including the Applicant's mother's conditions - diabetes, high blood pressure, and psychological conditions. Regarding the prospects for employment in Jamaica, the Applicant has also not provided supporting documentation to establish that she, an LPN, or her mother, a certified nursing assistant, would be unable to obtain gainful employment in Jamaica. Further, the WHO report states that recruitment for some health care positions is difficult, resulting in high vacancy rates, especially for nurses and physicians. As to the Applicant's mother's role as caretaker for her mother, while we recognize that being absent from her own mother may be difficult, the record reflects that the Applicant's mother has sisters who also currently care for their mother and would be able to continue doing so if the Applicant's mother relocated abroad. Thus, when considered individually and cumulatively, the demonstrated hardship does not rise above the common consequences of removal or refusal of admission to the level of extreme hardship.

In this case, the record does not establish that refusal of admission would result in extreme hardship to the Applicant's mother either if she remained in the United States or relocated to Jamaica.

B. Discretion

As the Applicant has not demonstrated extreme hardship to a qualifying relative or qualifying relatives, we need not consider whether the Applicant warrants a waiver in the exercise of discretion.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of S-M-T-*, ID# 15905 (AAO Apr. 5, 2016)