



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

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

MATTER OF M-D-L-P-M-P-

DATE: APR. 15, 2016

APPEAL OF LOS ANGELES, CALIFORNIA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Mexico, 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, Los Angeles, California, denied the application. The Director concluded that the Applicant was inadmissible for procuring admission into the United States by fraud or misrepresentation. The Director further determined that the Applicant had not established that refusal of admission would result in extreme hardship to a qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant submits declarations from her parents, medical documentation, and letters of support and claims that the Director erred by not considering the supporting evidence.

Upon *de novo* review, we will sustain 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 the Applicant procured admission into the United States in 1990 by presenting a fraudulent Form I-551, Permanent Resident Card. 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

As stated above, the Applicant has been found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, specifically the Applicant procured admission into the United States in 1990 by presenting a fraudulent permanent resident card. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation. The Applicant maintains that her parents would experience extreme hardship if she is refused admission to the United States. The evidence in the record, considered cumulatively, does establish that the Applicant's parents would experience extreme hardship if she is denied admission. The record also demonstrates that the Applicant merits a waiver as a matter of discretion.

(b)(6)

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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 and father. In support of her claim of hardship to her parents, the Applicant submitted the following evidence. With the Form I-601, the Applicant submitted medical records, declarations, family photographs, and a report about Mexico. The record also contains copies of school records, marriage and birth certificates, and immigration documents. On appeal, the Applicant submitted additional declarations and medical records.

The Applicant claims that if her parents remain in the United States without her, they will suffer emotional hardship. The Applicant asserts that her mother, born in [REDACTED] has arthritis, and her father, born in [REDACTED] has poor hearing and a heart condition. The Applicant maintains that her parents, who the record shows live with her, rely on her to cook, maintain the house, drive to doctor appointments, and manage their medication. The Applicant's parents affirm that the Applicant takes charge of their needs and that they rely on her to coordinate medical appointments, contact their social worker, and take them on daily outings. The Applicant's mother states that she has a heart condition, and the Applicant is her caregiver and by her side every day. The mother further states that the Applicant is the only family member willing to take care of them and that her other children are unreliable. The Applicant's sister states that she works full time and has no free time to assist their parents and that the Applicant is their primary caregiver. A letter from the Applicant's son states that his grandparents have deteriorating health and require round-the-clock supervision and depend on the Applicant to manage their medication and doctor appointments. Letters from the Applicant's sister, niece, and brother-in-law affirm that the Applicant takes care of her parents.

The Applicant submits medical documentation establishing that her father was being treated for heart disease, hypertension, hypocholesteremia, hypothyroidism, hyperlipidemia, hearing loss, vertigo, allergic rhinitis, and tinnitus; and that he has cerebral atrophy, dementia, memory impairment, and early Alzheimer's. The Applicant further submitted medical records establishing that her mother is being treated for hypothyroidism, hyperlipidemia, osteoarthritis, osteoporosis, hyperglyceridemia, allergic rhinitis, and anxiety and fatigue. The Applicant also submitted medical documentation of their medicine prescriptions.

Having reviewed the preceding evidence, we find it establishes that the Applicant's parents would experience extreme hardship if this waiver application is denied. In reaching this conclusion, we find the Applicant's parents are in their 80s and have serious health conditions. They live with the Applicant and are emotionally dependent on her for their care. When the evidence is considered together, it establishes that were the Applicant refused admission into the United States, her parents would experience extreme hardship.

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

The favorable factors in this case are the hardship to the Applicant’s parents and three children if the waiver application is denied, the numerous letters of support for the Applicant, the Applicant’s long residence in the United States, her community ties to the United States, and the passage of more than 25 years since the Applicant’s fraud or willful misrepresentation with respect to her inadmissibility. The adverse factors in this case are the Applicant’s fraud or misrepresentation, as stated above, and periods of unlawful status 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.

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 met that burden. Accordingly, we sustain the appeal.

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ORDER: The appeal is sustained.

Cite as *Matter of M-D-L-P-M-P-*, ID# 15923 (AAO Apr. 15, 2016)