



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

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

MATTER OF X-L-

DATE: APR. 28, 2016

APPEAL OF WASHINGTON FIELD OFFICE DECISION

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

The Applicant, a native and citizen of China, seeks a waiver of the ground of inadmissibility for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) section 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 to lawful permanent resident (LPR) status 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 Washington 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, specifically, for procuring admission to the United States by falsely representing herself as a LPR in 2005. The Director then determined that the Applicant had not established that denial of admission would result in extreme hardship to her spouse, the only qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in finding her inadmissible for fraud under section 212(a)(6)(C)(i) of the Act. In the alternative, the Applicant claims that the Director erred in not finding that her spouse's hardship would be extreme.

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

**I. LAW**

The Applicant is seeking to adjust to LPR status and has been found inadmissible for fraud, specifically, for procuring admission to the United States by falsely representing herself as a LPR in 2005. 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 issues to be addressed on appeal are whether the Applicant is inadmissible for fraud under section 212(a)(6)(C)(i) of the Act, and if so, whether the Applicant has established that her U.S. citizen spouse would experience extreme hardship were she unable to remain in the United States due to her inadmissibility.

The evidence in the record, considered both individually and cumulatively, establishes that the Applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, for having procured entry to the United States in 2005 with a fraudulent Form I-551, Temporary Evidence of Lawful Permanent Residence (I-551) stamp. The record further establishes that the

hardship claimed and demonstrated to the Applicant's U.S. citizens spouse rises above the common consequences of removal or refusal of admission to the level of extreme hardship, and that the Applicant merits a waiver as a matter of discretion.

#### A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. The record establishes that the Applicant procured a Form I-551, evidence of LPR status, stamp in her passport, which she then fraudulently utilized to procure entry to the United States after traveling abroad in 2005.

The Applicant contends that she retained an individual to assist her in obtaining an immigrant visa and work permit who acted as if she were an immigration attorney. With this individual's help, the Applicant maintains that she was taken to the USCIS office in Arlington, Virginia, where immigration officers took her paperwork and pictures. Soon thereafter, she explains that she received work authorization and a Form I-551 stamp. She maintains that she never had the intent, desire, or knowledge to commit fraud but, rather, was a victim of fraud by immigration officers and those affiliated with them.

In making a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act, the record must contain evidence showing that a reasonable person would find that an applicant used fraud or that he or she willfully misrepresented a material fact in an attempt to obtain a visa, other documentation, admission into the United States, or any other immigration benefit. USCIS Policy Manual, Volume 8 – Admissibility, Part J – Fraud and Willful Misrepresentation, Chapter 3(A)(1). The record establishes that the Applicant utilized a fraudulently obtained Form I-551 stamp when she procured re-entry to the United States in 2005. The Applicant herself admits in her June 19, 2014, statement that she had “some concern” about the process and the individual she had retained to assist her with her immigration processing. The Applicant has not established that she was unaware that the I-551 stamp was fraudulent when she utilized it to enter the United States. The Act makes clear that a foreign national must establish admissibility “clearly and beyond doubt.” *See* section 235(b)(2)(A) of the Act. *See* also 240(c)(2)(A) of the Act. The record establishes that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud.

#### B. Waiver

The Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives, in this case the Applicant's spouse. The Applicant claims that if her spouse relocates abroad to reside with her, he will suffer emotional, financial, and professional hardship. In his affidavit, the Applicant's U.S. citizen spouse states that he was born and raised in the United States and long-term separation from his community; his family, including his parents; and his gainful employment would cause him hardship. He further contends that were he to relocate to China, he would experience financial and professional hardship as he would have to start all over in a country where he is unfamiliar with the culture, customs and language.

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The record establishes that the Applicant's spouse was born and raised in the United States, and he is close with his U.S. citizen parents. The record further establishes his gainful employment as a marketing specialist, as evidenced by the letter submitted by the Applicant's spouse's employer. Based on the Applicant's spouse's extensive and life-long family, professional, and community ties to the United States, we concur with the Director that the Applicant has established that her spouse would suffer extreme hardship were he to relocate abroad to reside with the Applicant due to her inadmissibility.

Therefore, the record establishes that refusal of admission would result in extreme hardship to the Applicant's spouse.

C. 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 include extreme hardship to the Applicant's U.S. citizen spouse, the Applicant's periods of gainful employment in the United States, the Applicant's payment of taxes,

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community ties, and the Applicant's apparent lack of a criminal record. The unfavorable factors include the Applicant's fraud, as detailed above, and periods of unauthorized presence in the United States. We find that the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

### 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 met that burden. Accordingly, we sustain the appeal.

**ORDER:** The appeal is sustained.

Cite as *Matter of X-L-*, ID# 13208 (AAO Apr. 28, 2016)