



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

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

MATTER OF O-A-M-L-

DATE: AUG. 29, 2016

APPEAL OF CHARLESTON, SOUTH CAROLINA FIELD OFFICE (GREER FIELD SUPPORT OFFICE) DECISION

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

The Applicant, a native and citizen of Colombia, seeks a waiver 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 Field Office Director, Charleston, South Carolina, denied the application. The Director concluded that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, specifically for procuring admission to the United States by using a passport and visa that was not his own. The Director then determined that the Applicant had not established that denial of admission would result in extreme hardship to his 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 not finding that his 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 or misrepresentation. Specifically, the record indicates that on July 20, 2002, the Applicant entered the United States at the [REDACTED] Georgia port of entry using a passport and B2 visitor's visa that did not belong to him. Section 212(a)(6)(C)(i) of the Act renders inadmissible any foreign national who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, admission into the United States, or other benefit provided under the Act.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national.

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 on appeal is whether the Applicant’s U.S. citizen spouse would experience extreme hardship if he were unable to remain in the United States due to his inadmissibility. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record. The Applicant asserts that his spouse cannot relocate to Colombia because of family obligations to her mother and son from a previous relationship and that his spouse would experience extreme hardship as a result of separation. The claimed hardship to the Applicant’s spouse from separation consists primarily of emotional and financial hardships.

The evidence in the record, considered both individually and cumulatively, establishes that the Applicant’s spouse would experience hardship beyond the common results of removal or refusal of admission and rising to the level of extreme hardship if the waiver application is denied. The record further establishes that the Applicant merits a waiver as a matter of discretion.

### A. Waiver

The Applicant must demonstrate that refusal of admission would result in extreme hardship to his spouse. In support of his claim of hardship to his spouse, the Applicant submitted the following

*Matter of O-A-M-L-*

evidence: a statement, a letter from his spouse, identification documentation, family photographs, a statement from his mother-in-law, medical records, a report concerning the effects of deportation on U.S. citizen children, country conditions information, financial documentation, and school records for his son.

The Applicant asserts that his wife is unable to relocate to Colombia because she must stay in the United States to help care for her son and her mother, who suffers from depression and anxiety. The Applicant states that his wife's son, who is [REDACTED] years old, would not be able to relocate to Colombia because then his biological father would not be able to visit him and his asthma would worsen in Colombia. The Applicant also states that his wife came to the United States at a young age, has no immediate relatives in Colombia, and would be concerned for her safety and security. Because the Applicant is the sole income earner in the family he states that his removal will cause extreme hardship in that his wife will have to find employment and will no longer be able to care full-time for her two children and her mother. In addition, the Applicant states that he has been receiving treatment for chronic heart disease since 2009 and his wife is fears for his health if he is removed to Colombia.

The record establishes that the Applicant's spouse will suffer extreme hardship if the Applicant is removed from the United States. The record shows that the Applicant is the only income earner in the household while his wife cares for their three-year-old daughter, eight-year-old son, and, at times, the Applicant's mother-in-law. The record indicates that the Applicant's mother-in-law suffers from depression and panic attacks and that she receives care and support from both her husband and the Applicant's spouse, her only daughter. If the Applicant and his wife are separated, she would have to find employment and be unable to provide this care for her family members. In addition, because of economic conditions in Colombia, the Applicant may have difficulty finding employment and she may also have to support him financially. Further, we take notice of a current U.S. Department of State Travel Warning, dated April 5, 2016, for Colombia warning U.S. citizens of violence in certain areas of the country. Because of crime and violence in Colombia, the Applicant's spouse would also be concerned for his safety. We find that the significant change in caretaking responsibilities for the Applicant's spouse coupled with the removal of her spouse to a country where conditions are a concern amounts to extreme hardship. Therefore, the record establishes that refusal of admission would result in extreme hardship to the Applicant's spouse.

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. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident with the social and humane considerations presented 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). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence

indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the foreign national and his or her family, service in the U.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 good character. *Id.*

The favorable factors include extreme hardship to the Applicant's U.S. citizen spouse, child, and stepchild; the Applicant's periods of gainful employment in the United States as a handyman to support his family; the Applicant's lack of a criminal record; and, as attested to in numerous letters in the record, the Applicant's attributes as a valued member of the community. 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.

#### IV. 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. The Applicant has demonstrated that her spouse would experience extreme hardship. Accordingly, we sustain the appeal.

**ORDER:** The appeal is sustained.

Cite as *Matter of O-A-M-L-*, ID# 16715 (AAO Aug. 29, 2016)