



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

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

MATTER OF S-K-A-

DATE: AUG. 30, 2016

APPEAL OF NEWARK, NEW JERSEY FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Ghana, 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 Field Office Director, Newark, New Jersey, denied the application. The Director concluded that the Applicant had not established extreme hardship to a qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and states that he did not willfully misrepresent a material fact when applying for a visa in 2011 and the Director erred in not finding extreme hardship to the Applicant's spouse.

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 Director concluded the Applicant had misrepresented his marital status when applying for a visa in 2011.

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, or 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.

(b)(6)

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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 on appeal are whether the Applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for misrepresentation, and, if he is inadmissible, whether the Applicant has established extreme hardship to a qualifying relative. The Applicant claims on appeal that he did not willfully misrepresent his marital status when applying for a visa in 2011. He further claims that his spouse will experience extreme hardship due to his inadmissibility, primarily due to psychological hardship.

The record reflects that the Applicant willfully misrepresented a material fact when applying for a visa in 2011, and that the Applicant’s spouse will experience extreme hardship if he is removed from the United States. The Appeal will be sustained.

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 Director states that the Applicant misrepresented his marital status on a March 30, 2011, visa application. The Director states that the Applicant claimed he was married when he was not. The Applicant claims that he was still with his now ex-wife when his visa was granted on March 30, 2011, and his divorce was not granted by the court until [REDACTED] 2011. He claims that the court listed [REDACTED] 2010, as the date of his divorce on his divorce decree because that was the date the families met to deliberate the termination of the marriage, and the courts in Ghana use this date as the date of divorce when they actually grant the divorce. He

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states that he had no divorce order from the court when he applied for his visa, there was a misunderstanding as the court in Ghana backdated the divorce to the date the process was started, [REDACTED] 2010, and the actual date the court granted the divorce was [REDACTED] 2011.

The record includes a divorce decree from the Superior Court of Judicature, High Court of Justice, [REDACTED] Ghana entitled: In the Matter of Dissolution of Customary Marriage, dated [REDACTED] 2011, which states: “[T]he Customary Marriage contracted between the parties on the [REDACTED] day of [REDACTED] 2007 was customarily and validly dissolved on the [REDACTED] day of [REDACTED] 2010 and since that time any of the parties had the liberty to re-marry anybody anywhere at anytime ...such customary marriage and divorce are recognized under the Laws of Ghana.”

The record reflects that the Applicant had a customary marriage and he was divorced on [REDACTED] 2010. There is no evidence that the issuance date of the divorce decree is the date of the actual divorce. Therefore, he misrepresented his marital status on his March 30, 2011, visa application. We find that he is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation.

B. Hardship

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. With the Form I-601, the Applicant submitted a statement from his spouse, a psychological evaluation for her, prescription records, photographs, and letters of support. On appeal, the Applicant submits a letter from a counseling service and a brief.

The Applicant’s spouse states that she is on medication for anxiety, depression, and post-traumatic stress disorder. She states that she had a very traumatic rape experience when she was 13-years-old, and it feels like it happened yesterday. She states that she has struggled with post-traumatic stress disorder since that experience and has had nightmares and cold sweats. She states that the fear of not being with the Applicant and being left alone with her two children is bringing back her depression and anxiety, and she is back on medication. She states that she had a previous, unpleasant marriage, and she had no hope of remarrying, but the Applicant changed her life and her children’s lives. She further states that he is her emotional and psychological source of strength, he is the only person she opens up to apart from her doctors, he makes sure she takes her medication, and he is a father figure for her two boys.

The record includes a psychologist’s letter which states that the Applicant’s spouse was diagnosed with post-traumatic stress disorder and major depressive disorder, she was prescribed several medications, she was sexually assaulted as a teenager, and she has two children from a prior marriage who are living with her. The record includes a letter from a counseling center reflecting that she has engaged in therapy concerning a sexual assault she experienced in Kenya, and this assault has left her feeling traumatized and unsafe.

The record also includes prescription notes for the Applicant's spouse for schizophrenia, anxiety and depression medications. The record also includes several letters which detail the Applicant's closeness to his spouse, the emotional support he provides her, and his role in raising his spouse's children.

The Applicant's spouse also states that the Applicant provides financial support, pays the bills, and contributes heavily to the family upkeep. She states that she plans to attend nursing school, but she cannot do this without the Applicant's help in caring for her children. The letters of support in the record reflect that the Applicant provides financial support, although the level of support is unclear from the record.

The record reflects that the Applicant's spouse is experiencing significant emotional and psychological hardship. She is taking medication for several mental health issues and has a unique history of trauma which adds to her hardship. In addition, the Applicant is involved with helping her raise her children. When combined with the normal hardships resulting from removal of a spouse, which include the loss of the Applicant's financial support, we find that the Applicant has demonstrated extreme hardship to a qualifying relative.

C. Discretion

We will 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 grounds 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 unfavorable factors in this case include the Applicant's misrepresentation. The favorable factors include the extreme hardship his spouse would suffer if the waiver application is denied, his good moral character as evidenced by the letters of support, and the absence of a criminal record. Upon review, the positive factors in this case outweigh the negative factors, such that a favorable exercise of discretion is warranted.

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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.

ORDER: The appeal is sustained.

Cite as *Matter of S-K-A-*, ID# 16909 (AAO Aug. 30, 2016)