



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

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

MATTER OF C-O-A-

DATE: AUG. 31, 2016

APPEAL OF CHICAGO, ILLINOIS FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Nigeria, 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 that of a lawful permanent resident 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 Director, Chicago, Illinois Field Office, denied the application. The Director concluded that the Applicant had not established that her spouse would suffer extreme hardship if the waiver application were not approved.

The matter is now before us on appeal. In the appeal, the Applicant asserts that the Director abused her discretion and did not acknowledge the exceptional nature of the hardship the Applicant's spouse will experience if he is separated from the Applicant and left to raise their daughter alone. She also asserts that her spouse would experience extreme hardship upon relocation to Nigeria

Upon *de novo* review, we will sustain the appeal. The evidence establishes that the Applicant's spouse would experience extreme hardship if the application is denied.

I. LAW

The Applicant is seeking to adjust status to that of a lawful permanent resident and has been found inadmissible for fraud or misrepresentation, specifically, for seeking to procure entry into the United States using a passport under a false identity.

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 U.S. 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 Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.¹ The first issue to be addressed on appeal is whether the Applicant has established that her spouse would experience extreme hardship if her waiver application is denied.

The Applicant asserts that the Director erred in finding that hardship to her spouse would not be extreme. In support of her assertion, she cites the U.S. Circuit Court of Appeals for the Seventh Circuit’s decision addressing her eligibility to apply for a waiver, in which the court advised the Board on remand to consider the “unique facts . . . and the exceptional hardship that [the Applicant] and her family have endured.” *Atunnise v. Mukasey*, 523 F.3d 830, 839 (7th Cir. 2008).

Although the Applicant asserts that the Director “failed to acknowledge the exceptional nature” of her spouse’s hardship, the Applicant provides no support for her assertion that we are bound by the

¹ The record reflects that the Applicant sought to procure admission into the United States using a United Kingdom passport that did not belong to her. She was ordered removed from the United States in 1998.

Seventh Circuit's *dicta* in these proceedings. Moreover, the Applicant bears the burden of establishing that her qualifying relative would experience extreme hardship if her waiver was denied.

On appeal, the Applicant further asserts that in balancing the factors in this case, the Director erroneously applied the heightened hardship standard articulated at 8 C.F.R. § 212.7(d).² We find no evidence in the record to show that the Director committed this error. The record shows that she considered the evidence individually and in the aggregate to determine whether the Applicant's spouse would suffer extreme hardship if the waiver was denied. The Director's finding that the Applicant did not merit a waiver as a matter of discretion was unnecessary, however, because the discretionary analysis serves no purpose where extreme hardship has not been found.

A. 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 U.S. citizen spouse. The Applicant does not indicate whether her spouse intends to remain in this country or relocate with her to Nigeria should she leave the United States. The Applicant asserts that her spouse would experience extreme hardship under either scenario.

In support of her claims of hardship to her spouse, the Applicant submitted the following evidence with her Form I-601: statements from the Applicant, her spouse, and their daughter; financial records; a brief; her own medical records; country-conditions reports; and letters attesting to the Applicant's good moral character and community ties. On appeal, the Applicant submits previously submitted statements, a brief, and the Seventh Circuit's decision in her case.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

² The standard at 8 C.F.R. § 212.7(d) requires applicants who are inadmissible in cases involving violent or dangerous crimes to establish exceptional circumstances, which include exceptional and extremely unusual hardship.

We now address whether the Applicant has established that her qualifying spouse would experience extreme hardship as a result of her inadmissibility, should they be separated.

Regarding emotional hardship her spouse would experience if he remained in the United States without her, the Applicant states that she, her spouse, and their daughter are very close to one another. She further states that while she spent 1 year in immigration detention, her spouse and daughter suffered greatly as a result of the separation. The Applicant, her spouse, and daughter state that the daughter became depressed and anxious in the Applicant's absence. The Applicant's spouse states he suffered from the separation personally and also by observing their daughter's emotional distress. The Applicant states that her spouse becomes very anxious when considering possible separation and that he relies upon her for emotional support. In addition, another factor related to potential emotional hardship to the Applicant's spouse concerns the couple's efforts to have a second child. The Applicant asserts that she is seeking treatment for infertility with her spouse, but if she were removed to Nigeria, she would be unable to pursue fertility treatments without him. To support this claim, the Applicant submits medical records regarding their fertility treatment.

The Applicant also asserts that she is their daughter's primary caregiver. She states that if she is separated from her spouse and daughter, she is concerned that no one would be able to meet their daughter's needs, because her spouse works long hours as a cabdriver. The Applicant states that her spouse relies upon her to perform all the household responsibilities, such as cooking and cleaning.

The record contains several other references to hardship the Applicant's daughter would experience if the waiver application were denied. It is noted that Congress did not include hardship to a foreign national's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the Applicant's husband is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the Applicant's daughter will not be separately considered, except as it affects the Applicant's spouse. The Applicant has shown that her qualifying spouse would experience emotional hardship by virtue of their daughter's hardship.

Concerning the financial hardship her spouse would experience if he remained in the United States, the Applicant asserts that her family needs her income. The Applicant also states that finding work in Nigeria will be very difficult, if not impossible, because she has been away for so long and jobs are scarce. She states that she would be unable to supplement her spouse's household income from Nigeria. To corroborate her claims, she submits an article that indicates that Nigeria's unemployment rate is very high. The Applicant's spouse states that he could not pay their bills without the Applicant's income. He claims that he struggles to send some money monthly to his mother and other family members in Nigeria, but that he would not be able to without the Applicant's income. He also would not be able to financially maintain his own household in the United States and one for the Applicant in Nigeria. Moreover, he refers to the high costs of travel to Nigeria, which would restrict his ability to visit the Applicant. Similarly, he believes their telephone expenses would prevent them from talking frequently. To corroborate these claims, the Applicant submits financial records, which show that in 2010, the Applicant earned approximately \$8,700 from her hair-braiding business and \$126 in wages from a homecare facility. In 2012, the Applicant's spouse earned a net profit of \$9,655, after earning \$29,915 in gross income and paying expenses totaling \$19,467. The Applicant and her spouse together reported an adjusted gross income in 2012

of \$18,683. The Applicant's financial contribution to the family is significant. The record establishes that her qualifying spouse would experience financial hardship that we will consider in the aggregate with evidence of other types of hardship.

In addition, the Applicant expressed concern about her spouse's health if he were to remain in the United States without her. She states that he suffers from asthma and that she assists him with keeping his medical appointments, making sure he has the correct medications, and ensuring he takes appropriate precautions. Though we will consider the Applicant's statement with other evidence of hardship, the record lacks corroborating documentation to show that her spouse has a serious health condition for which he requires her assistance.

As stated above, the Applicant's evidence supports concluding that the Applicant's spouse would experience emotional hardship due to his own and their daughter's separation from the Applicant. The Applicant's spouse also relies heavily upon the Applicant to provide care for their daughter; she has been their daughter's primary caregiver. The record, moreover, contains evidence that Nigeria's unemployment rate is high; so it is unlikely that the Applicant would be able to contribute financially to the family from Nigeria and likely that she would require her spouse's financial assistance. Considering the evidence of emotional and financial hardship in the aggregate, we conclude, therefore, that the Applicant has shown that her spouse would experience extreme hardship if her waiver application were not approved.

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 Applicant's favorable factors include the extreme hardship her spouse and daughter would experience if her waiver is not approved; her years of residence in the United States while trying to legalize her immigration status; her family ties to the United States; her good moral character, as described in letters from friends; her lack of a criminal record; and hardship to the Applicant herself if she were removed from the United States.

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Her unfavorable factors are her attempt to enter the United States in 1998 using fraudulent documents and her not being forthcoming about that attempt initially when questioned upon her return in 2006.

The record establishes that the positive factors in this case outweigh the negative factor and 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. The Applicant has shown that her spouse would suffer extreme hardship if her waiver application were not approved.

ORDER: The appeal is sustained.

Cite as *Matter of C-O-A-*, ID# 10762 (AAO Aug. 31, 2016)