



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

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

MATTER OF N-C-

DATE: FEB. 24, 2016

APPEAL OF NEWARK FIELD OFFICE DECISION

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

The Applicant, a native of Russia and citizen of Georgia, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Newark, New Jersey, denied the application. The matter is now before us on appeal. The appeal will be sustained.

In a decision dated May 20, 2015, the Director found that the Applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a nonimmigrant visa, and subsequent entry into the United States, by fraud or willful misrepresentation. The Director concluded that the Applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, and the Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

On appeal, the Applicant asserts that her U.S. citizen spouse would suffer extreme hardship if she is not permitted to remain in the United States. In support, the Applicant submits a brief, statements from herself and her spouse, medical documentation, financial documentation, documents related to the Applicant's vocational training, general articles about medical and mental health, and country-conditions information about Georgia. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), provides:

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.

The Director found that the Applicant misrepresented a material fact regarding her marital status when she applied for her nonimmigrant visa. In her application, the Applicant stated that she was married to the individual with whom she traveled to the United States in 2008. In fact, at that time, she was married to a different man, whom she divorced in 2010. On appeal, the Applicant asserts that she was not aware that the other man was named as her spouse on her visa application, as she claims that the application was prepared by a third party. She asserts that, because she did not know

that the visa application contained this incorrect information, she did not willfully misrepresent this fact. Alternatively, she asserts that the misrepresentation was not material, as she was, in fact, married and eligible for the visa.

The term "willful" should be interpreted as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). We are unable to find that an applicant is inadmissible for making a willful misrepresentation of a material fact without "clear, unequivocal, and convincing evidence." See *Kungys v. United States*, 485 U.S. 759, 771-72 (1988).

Regarding the Applicant's assertion that she was unaware that her visa application named a different individual as her husband, we note that the Applicant's DS-156, Nonimmigrant Visa Application, states that the application was prepared by the Applicant herself, and not by another person on her behalf. The application is also signed twice by the Applicant: first, to indicate that she prepared the application, and second, to certify that she read the questions and answers on the application and that the answers were true and correct. Regardless of whether or not the application was completed by a third party, the Applicant had the duty and responsibility to review the DS-156 application prior to its submission.

Though the Applicant states she did not willfully misrepresent information to receive a visa, the record does not include sufficient documentary evidence to support her claim. The record includes no evidence showing the Applicant was incapable of exercising her judgment during the visa-application process or was unaware of her actions. As such, we find that the misrepresentation regarding the identity of her spouse was willfully made.

With respect to the Applicant's claim that the misrepresentation was not material, we disagree. "[T]he test of whether concealments or misrepresentations are "material" is whether they can be shown by clear, unequivocal, and convincing evidence to have been predictably capable of affecting, *i.e.*, to have had a natural tendency to affect, the Immigration and Naturalization Service's decisions." *Kungys v. United States*, 485 U.S. 759, 760 (1988). In *Matter of S- and B-C*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

By misrepresenting her spouse's identity on her nonimmigrant visa application, the Applicant cut off a consular line of inquiry regarding her ties to her country or to the United States that could have affected the consular officer's decision to approve the Applicant's nonimmigrant visa

application. The record therefore supports the Director's determination that the Applicant procured a nonimmigrant visa and admission through fraud or willful misrepresentation of a material fact. Accordingly, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The Applicant seeks a waiver of inadmissibility in order to remain in the United States with her U.S. citizen spouse.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), provides:

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.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. In this case, the qualifying relative is the Applicant's U.S. citizen spouse. 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).

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), but hardship "need not be unique to be extreme." *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996). 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); *see also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship); *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).

The Applicant contends that her U.S. citizen spouse of three years would experience medical, financial, and emotional hardship if he were to remain in the United States while the Applicant relocates abroad due to her inadmissibility. The Applicant states that her spouse suffers from gout, degenerative disc disease, and liver damage. The Applicant's spouse states that he has gout, and he is experiencing extreme fatigue, headaches, and vomiting three times a week. In support, the Applicant submits medical records, including letters from her spouse's physician corroborating his symptoms and risks of worsening health and serious complications. Specifically, her spouse's

physician states that the Applicant's spouse suffers from gout, scoliosis, degenerative disc disease, and lower back pain; medications used for treatment of gout may lead to liver damage; and he needs the Applicant to tend to him in case of an emergent, life-threatening condition.

The Applicant also asserts that, without her wages, her spouse would struggle to meet his basic expenses, including housing and medical costs. The Applicant submits financial documentation of her and her spouse's income and expenses. Their 2014 federal tax return reflects an income of \$5,420 for the Applicant and \$36,100 for the Applicant's spouse.

Finally, the Applicant asserts that her spouse would suffer emotionally and may risk depression due to the stress of separation from the Applicant. The Applicant's spouse's physician states that he needs the Applicant for emotional support. With respect to emotional hardship, the Applicant submits letters from her spouse describing the stress that he experiences as a result of her unresolved immigration status and the fear of potential separation. The Applicant's spouse details his closeness to the Applicant.

The record reflects that the Applicant's spouse would experience emotional hardship without the Applicant. We also note the serious medical issues he is experiencing as a source of hardship. The record reflects that he would experience a small amount of financial hardship without her. Based on the totality of the circumstances, the Applicant has established that her spouse would experience extreme hardship were he to remain in the United States while the Applicant relocates abroad due to her inadmissibility.

In regard to relocating abroad to reside with the Applicant, the Applicant states that her spouse is a U.S. citizen, has resided in the United States since his birth, and has family living in New York. The Applicant asserts that relocating to Georgia would cause her spouse extreme hardship due to separation from his family, particularly his mother, who is ailing and depends on the Applicant's spouse for care; his difficulty finding employment in Georgia; his unfamiliarity with the language in Georgia; and the decreased availability and quality of medical care there. The Applicant's spouse also submits a letter stating that he has never travelled outside of the United States, and that he could not transition to moving outside of the United States, given his inability to find work and to speak the language there. In support, the Applicant submits the documentation noted above regarding her spouse's health problems. She also submits letters from her spouse and his family documenting his family ties and the assistance he and the Applicant provide to his mother, whose multiple health problems, including valvular heart disease, diabetes, and gout, are also documented in the record. The U.S. Department of State notes that Western-standard medical care in Georgia is limited, and people with pre-existing health problems may be at risk due to inadequate medical facilities. The letter from the Applicant's spouse's physician further notes that the Applicant's spouse faces greater risk of complications resulting from unfamiliar microbes or other contaminants abroad due to his liver condition.

The record reflects that the Applicant's spouse has significant ties to the United States; he is involved with caring for his ailing mother; he does not have ties to Georgia, and he would likely

experience difficulty finding employment there due to language issues. We note his medical issues as a significant source of hardship, and the difficulty in finding comparable treatment in Georgia. Based on the hardship factors presented, we find that the record establishes that the Applicant's spouse would experience extreme hardship were he to relocate to Georgia to reside with the Applicant.

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 matter are the extreme hardship the Applicant's U.S. citizen spouse would face if the Applicant were to relocate to Georgia, regardless of whether he accompanied the Applicant or stayed in the United States; the Applicant's community ties; letters in support on behalf of the Applicant; the Applicant's gainful self-employment and continuing education in a home health aide program; the Applicant's payment of taxes; the Applicant's apparent lack of a criminal record; and the Applicant's expressed remorse for her actions in violation of immigration law.

The unfavorable factors in this matter are the Applicant's procurement of a visa to the United States by fraud or willful misrepresentation; and periods of unauthorized stay and employment while in the

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United States. The record establishes that the positive factors in this case outweigh the negative factors, and 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.

ORDER: The appeal is sustained.

Cite as *Matter of N-C-*, ID# 15551 (AAO Feb. 24, 2016)