



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

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

MATTER OF V-C-

DATE: FEB. 29, 2016

APPEAL OF PHILADELPHIA FIELD OFFICE DECISION

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

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

The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his U.S. citizen spouse. In a decision dated December 3, 2014, the Director found the Applicant to be inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring a nonimmigrant student visa by fraud or the willful misrepresentation of a material fact. In a December 3, 2014, decision, the Director determined that the evidence in the record was insufficient to establish that the Applicant's U.S. citizen spouse would experience extreme hardship if she remained in the United States or if she relocated with the Applicant to India. The Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.¹

On appeal, the Applicant contests that he procured his student visa by fraud or willful misrepresentation of a material fact. Alternatively, he asserts that the cumulative evidence in the record demonstrates that his spouse will experience extreme hardship if he is denied admission and she either remains in the United States or relocates with him to India. The record includes, but is not limited to, information relating to the Applicant's student status; affidavits from the Applicant, his spouse, family, and friends; medical and psychological assessment evidence; financial and country conditions information; and documentation establishing relationships and identity. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

¹ A prior Form I-601, denied on November 22, 2011, was not appealed to our office.

(b)(6)

Matter of V-C-

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)(1) of the Act provides that § 212(a)(6)(C)(i) inadmissibility may be waived as a matter of discretion for

an alien 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 . . . that the refusal of admission . . . 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.

In the immigration context, a finding of fraud requires that an individual "know the falsity of [his] statement, intend to deceive the Government official, and succeed in this deception." *In re Tijam*, 22 I&N Dec. 408, 424 (BIA 1998). Willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. *See Parlak v. Holder*, 57 F.3d 457 (6th Cir. 2009) (citing to *Witter v. INS*, 113 F.3d 549, 554 (5th Cir. 1997)); *see also Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995). "The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary." *Mwongera v. INS*, 187 F.3d 323, 330 (3d Cir. 1999).

The record reflects that in September 2010, the Applicant submitted a Form I-20, Certificate of Eligibility for (F-1) Nonimmigrant Student from [REDACTED] located in [REDACTED] California. The Form I-20 stated that the Applicant was enrolled in a 24-month business administration and management program at [REDACTED] program dates September 7, 2010, to December 30, 2012. The Applicant's F1 status was approved; however, his status was terminated on January 18, 2011, when it was determined that [REDACTED] committed widespread F1 student visa fraud, and that the Applicant's purpose in enrolling at [REDACTED] was to obtain employment authorization to continue working for [REDACTED] rather than to pursue an education at [REDACTED].

The Applicant asserts that he did not misrepresent his intent to pursue an education at [REDACTED] and that he took three online classes at [REDACTED] during the 2010 fall semester before the school was closed down in January 2011. The Applicant states further that he did not know that [REDACTED] was not a legitimate school at the time he enrolled there, he was unable to reach [REDACTED] or obtain his school transcripts after the school closed, and that he himself was a victim of [REDACTED] fraud against its students. Court documentation and articles relating to a fraud case filed against [REDACTED] corroborate that [REDACTED] offered some online classes, that [REDACTED] defrauded students out of tuition money and in some cases did not provide students with transcripts, and that many students were unaware of [REDACTED] fraudulent scheme.

(b)(6)

Matter of V-C-

Evidence in the record also reflects, however, that the Applicant listed [REDACTED] as the curricular practical training employer on his Form I-20 for [REDACTED]. The record reflects that the Applicant was already employed by [REDACTED] in New Jersey, at the time he enrolled at [REDACTED], and that he continued his employment with [REDACTED] throughout 2010. The record reflects further that the Applicant did not move to California after he enrolled at [REDACTED] and although the Applicant claims that he took online classes, he did not provide evidence such as his class itineraries, syllabi, assignments, required materials, or other documentation to support his assertion that he attended online classes at [REDACTED] during the fall of 2010.

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 same is true for admissibility in the context of an application for adjustment of status. See *Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008). See *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008). See *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). Here, the record contains insufficient evidence to overcome the Director’s finding that the Applicant did not attend [REDACTED], and that his purpose for enrolling at [REDACTED] and submitting a related Form I-20 was to obtain employment authorization to continue working for [REDACTED] rather than to pursue an education at [REDACTED]. Accordingly, we affirm that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for procuring an immigration benefit by willful misrepresentation of a material fact.

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).

We will first address hardship if the Applicant's spouse remains in the United States without the Applicant. The Applicant's spouse states in a letter that she suffers from medical conditions that cause her chronic pain and affect her mobility, that she is on medication for these conditions, and that she also takes medication for anxiety and depression. She indicates that the Applicant helps her with housework and that he motivates her to exercise and to take care of her physical health. The Applicant's spouse also asserts, in a document estimating the couple's monthly expenses, that she obtains health insurance through the Applicant's employer. The Applicant's spouse states that her medical conditions and a poor economy have affected her ability to work, and that the Applicant supports the couple financially. She claims further that she owes over \$35,000 in student loans and that the Applicant pays her student loan payments and their auto loan payments. Federal income tax return and employment evidence corroborate that the Applicant's spouse does not work and that the Applicant is the couple's sole financial provider.

Letters from the Applicant's friends and from the Applicant's spouse's sister and uncle indicate, similarly, that the Applicant's spouse suffers from physical ailments and depression, and that she relies on the Applicant emotionally, physically and financially. The Applicant's mother-in-law states further, in a letter, that the Applicant and his spouse love each other very much, and that the Applicant is a huge support system for his spouse. She adds that the Applicant's spouse has become angry and depressed about the Applicant's possible departure from the country, and she expresses fear that the spouse's depression and medical ailments will worsen if the Applicant is not allowed to remain in the United States. She also contends that she lives with the Applicant and his spouse, that she has physical limitations as well, and that she and the Applicant's spouse rely on the Applicant to help with her daily care and activities. Medical evidence for the Applicant's mother-in-law demonstrates that she suffers from osteoarthritic knee and shoulder conditions, and that she relies on her daughter for help with daily activities at home.

Medical evidence demonstrates further that the Applicant's spouse has been diagnosed with cerebral palsy, idiopathic scoliosis, disc degeneration, insomnia, and depression. The materials reflect that the spouse's conditions cause physical disability, widespread pain, and depression, and that the Applicant's spouse is on medication for her conditions. The evidence also contains a medical opinion stating that the Applicant's spouse needs the Applicant for physical assistance and for her emotional well-being, and that additional stress could exacerbate the Applicant's spouse's conditions. General articles discussing the medical conditions are also contained in the record.

Letters from the Applicant's spouse's therapist reflect that the spouse attends ongoing therapy sessions for anxiety attacks, insomnia, and severe mood swings; that she exhibits signs of anxiety and severe depression; and that she is on medication. The therapist recommends continued therapy and medication. The therapist also notes that the Applicant is an important person in his spouse's life, and the therapist expresses concern that the Applicant's spouse's emotional condition will worsen if the Applicant is removed from the United States.

Upon review, the cumulative evidence in the record is sufficient to establish that the Applicant's spouse would experience hardship beyond that normally experienced upon inadmissibility of a

Matter of V-C-

family member if she remains in the United States separated from the Applicant. The documentation demonstrates that the Applicant's spouse has serious medical conditions, that she relies on the Applicant for assistance and healthcare coverage, and that her physical and emotional conditions could worsen if she is separated from the Applicant. The record also reflects that the Applicant's spouse is also financially dependent on the Applicant, and that she also relies on the Applicant to help with her mother's care. Considered in the aggregate, the Applicant has shown that the cumulative effect of the hardships that his spouse would experience if she remained in the United States rise to the level of extreme hardship.

With regard to hardship upon relocation to India, the Applicant's spouse states that she was born and raised in Kenya, and that she is unfamiliar with the language and culture in the [REDACTED] area of India where the Applicant is from. She claims that she is unable to communicate with the Applicant's family in India, and that they ridicule her physical ailments. She also indicates that she became ill during a prior visit to India and that medical services were limited and inferior to those in the United States. She adds that women are discriminated against in India, and that it is unsafe for women in India.

Letters from the Applicant's in-laws and friends corroborate that the Applicant's spouse has never lived in India, that she has no family there, that she is not an Indian citizen, and that she is unfamiliar with life in India. A letter from the Applicant's parents indicates further that there are no proper health care services where they live in India, it is difficult to find employment, and that the Indo-Pakistan border area where they live has ongoing political tensions. They also contend that the Applicant's spouse would face hardship in India due to discrimination based on her physical disabilities, and due to her different ethnic and cultural background and her inability to speak the local language. In addition, a letter from the Applicant's spouse's therapist recommends continued therapy and medication, and expresses concern that the Applicant's spouse's emotional condition will worsen if she moves to India.

The evidence in the record reflects that the Applicant's spouse has significant family ties and financial obligations in the United States, and that she has no ties in India. The evidence also reflects that the Applicant's spouse could face safety concerns in India, and that her physical and emotional well-being would likely worsen if she relocated to India. Upon review, the cumulative evidence in the record is sufficient to establish that the Applicant's spouse would experience hardship beyond that normally experienced upon inadmissibility of a family member if she moved to India 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 unfavorable factors in this case are the Applicant's procurement of an F1 nonimmigrant student visa in September 2010, by willful misrepresentation of a material fact.

The favorable factors are the extreme hardship that the Applicant's U.S. citizen spouse would face if the Applicant were denied admission into the country; statements attesting to the Applicant's good character; and the Applicant's lack of a criminal record. Upon review, we find that the favorable factors in this case outweigh the unfavorable factors, such that 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 V-C-*, ID# 15457 (AAO Feb. 29, 2016)