



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

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

MATTER OF M-G-

DATE: JAN. 12, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Guyana, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Director, New York District Office, denied the application, and we dismissed the subsequent appeal. The matter is now before us on a motion to reopen. The motion to reopen will be granted and the appeal will be sustained.

In a decision issued on September 23, 2014, the Director found the Applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring a nonimmigrant visa and entry into the United States by fraud or willful misrepresentation. Concluding the Applicant had not established that failure to receive a waiver would impose extreme hardship on a qualifying relative, the Director, accordingly, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. On appeal, we determined that extreme hardship to a qualifying relative had not been established and dismissed the appeal accordingly.

In support of the instant motion, the Applicant submits a brief, financial documentation, a psychological evaluation of the Applicant's spouse, medical documentation, academic and professional certificates issued to the Applicant, letters of support, a police certificate of conduct, an affidavit from the Applicant's spouse, documentation pertaining to the Applicant's parents, and information about country conditions in Guyana. The entire record was reviewed and considered in rendering this decision.

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

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.

With respect to the Director's finding of inadmissibility, the record reflects that the Applicant used an alias and different date of birth when she applied for and obtained a nonimmigrant visa, because she had previously been denied entry into the United States. She was inspected and admitted to the United States on November 19, 2001, at [redacted] International Airport, after presenting the fraudulently obtained visa. The Applicant does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility in order to remain in the United States with her U.S. citizen spouse.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 to the satisfaction of the Attorney General (Secretary) that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

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).

On appeal, we determined that the Applicant had not established that her U.S. citizen spouse would experience extreme hardship were he to remain in the United States while the Applicant relocated abroad due to her inadmissibility. Specifically, we determined that the submitted documentation was not sufficiently probative to establish that the Applicant's spouse would suffer emotional or medical hardship, and that the financial documentation was insufficient to establish the impact of the loss of the Applicant's income on his spouse.

On motion, the Applicant submits a psychological evaluation of her spouse conducted by a licensed psychologist. The report notes that the Applicant's spouse suffers from severe insecurity, stemming

in part from having experienced his parents' abusive relationship and subsequent divorce, and also in part from the infidelities committed by his first wife. The report also notes that the Applicant's spouse's self-esteem plummeted following his divorce, and that the Applicant is the first person who has understood, accepted, and loved him. The report diagnoses the Applicant's spouse with Adjustment Disorder with Mixed Anxiety and Depressed Mood, as well as Dependent Personality Disorder. The report indicates that the Applicant's spouse suffers disproportionate distress in response to stressors, and that he needs others to assume responsibility for most major areas of his life. The report specifically states that the Applicant's spouse's symptoms are increased by the thought of separation from his wife and that he is deeply reliant on the Applicant for his daily functioning.

The record also includes letters and affidavits of support from the Applicant's spouse, her spouse's parents, and other relatives. These letters document the Applicant's close relationship with her spouse's mother and the financial support that the Applicant and her spouse provide to her spouse's father. The letters also indicate that the Applicant's presence in her spouse's life has led to reconciliation and deepening of her spouse's relationships with his family and that, were the Applicant to return to Guyana, she, her spouse, and their relatives would all suffer emotionally from the separation, which would deepen the emotional hardship imposed on the Applicant's spouse.

On motion, the Applicant has also submitted financial documentation of her and her spouse's incomes and expenses. The additional documents show that the Applicant's wages comprise more than half of the household income. The Applicant also provided detailed documentation of their expenses, including recurring payments for debts related to housing, a car, student loans, insurance policies, and credit cards. Although the record establishes that the Applicant's spouse is gainfully employed, the additional documentation submitted on motion establishes that the Applicant's spouse would suffer significant financial hardship from the loss of the Applicant's income.

Based on a totality of the circumstances, we find that the Applicant has established that her spouse would experience extreme hardship were he to remain in the United States while the Applicant resides abroad due to her inadmissibility.

With respect to relocating abroad to reside with the Applicant as a result of her inadmissibility, we determined on appeal that the Applicant had not provided documentation corroborating her claim that her spouse would suffer financial and medical hardship, and therefore the record, in the aggregate, did not establish that her spouse would suffer extreme hardship if he relocated to Guyana.

On motion, the Applicant provides the documentation noted above, including financial records, a psychological evaluation, and letters of support from her spouse and family. The record reflects that the Applicant's U.S. citizen spouse was born and raised in the United States; he has never traveled to Guyana, nor does he have any ties there, aside from his wife. The record reflects that the Applicant has not resided in Guyana for over 15 years, and her family members are deceased, living abroad, or are no longer in contact. Were the Applicant's spouse to relocate to Guyana to reside with the Applicant, he would leave behind his father, who is largely dependent on his financial support and

who also resides with the Applicant and her spouse for much of the year, his mother, his siblings, his gainful employment, his volunteer work, and his community ties, thereby causing him hardship.

The psychological evaluation, as discussed above, documents the Applicant's adjustment disorder, including his debilitating distress and anxiety when faced with stressors. The report also notes the Applicant's dependent personality; while he is primarily dependent upon the Applicant, he would have no other support network available to him in Guyana. The record also contains country conditions information indicating that Guyana suffers high unemployment and low wages, corroborating the Applicant's claim that she and her spouse would struggle to pay the debts they owe in the United States if they are both residing in Guyana. Additionally, the record contains a physician's letter stating that the Applicant will require advanced fertility treatments in order to conceive, and that she has a history of pregnancy complications that have resulted in miscarriage. Country conditions information provided on motion indicates that medical care in Guyana is below U.S. standards, that even treatment for minor medical needs is inconsistent, and that treatment for major illnesses or procedures is very limited due to lack of trained specialists. Finally, documentation on motion establishes that serious crime, including murder and armed robbery, is a serious problem in Guyana. The Applicant has thus established on motion that her spouse would suffer extreme hardship were he to relocate abroad to reside with the Applicant due to her inadmissibility.

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).

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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 Guyana, regardless of whether he accompanied the Applicant or stayed in the United States; the Applicant’s community ties; the Applicant’s gainful employment in the United States; the Applicant’s payment of taxes; certificates issued to the Applicant for academic and professional accomplishments; church involvement and volunteer work; and the apparent lack of a criminal record since 2001, more than fourteen years ago. The unfavorable factors in this matter are the Applicant’s procurement of a nonimmigrant visa and subsequent entry to the United States by fraud or willful misrepresentation, the Applicant’s periods of unlawful presence and employment in the United States, and the Applicant’s 2001 conviction for disorderly conduct. Although the Applicant’s immigration violations are serious, 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.

ORDER: The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of M-G-*, ID# 15201 (AAO Jan. 12, 2016)