



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

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

MATTER OF E-C-

DATE: JAN. 12, 2016

APPEAL OF ATLANTA FIELD OFFICE DECISION

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

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

In a decision dated December 4, 2014, the Director determined that the Applicant was 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 seeking to procure an immigration benefit by willful misrepresentation of a material fact. The Director determined further that the Applicant did not establish that his U.S. citizen spouse would experience extreme hardship if he were denied admission into the United States. The Form I-601 was denied accordingly.¹

On appeal, the Applicant asserts that the evidence in the record demonstrates that his spouse will experience extreme hardship if he is denied admission into the country and she remains in the United States, or relocates with him to Haiti. The record includes, but is not limited to, letters from the Applicant, his spouse, and from family, friends and members of the Applicant's community; a psychological evaluation; financial documentation; country conditions evidence; 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:

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.

¹ The Director's decision erroneously refers to a waiver under § 212(h) of the Act, 8 U.S.C. § 1182(h). The error is harmless as the decision and analysis reflect that the Form I-601 was reviewed for eligibility under § 212(i), rather than § 212(h) of the Act.

The record reflects that, with intent to strengthen his asylum claim, the Applicant falsely stated on his Form I-589, Application for Asylum and for Withholding of Deportation, that he was married and had a spouse and child living in Haiti. The Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for attempting to procure an immigration benefit by willful misrepresentation of a material fact. The Applicant does not contest his inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i)(1) of the Act provides that section 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.

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).

With regard to hardship upon separation, the Applicant states that his spouse needs him emotionally. The Applicant's spouse adds, in a letter, that she was the victim of domestic abuse in her prior marriage, the Applicant makes her forget her past and has changed her life, and that the

Applicant completes her. The Applicant states that his spouse was the victim of physical, emotional, and sexual abuse from her ex-spouse, and his spouse received lawful status under the Violence Against Women Act. The Applicant's spouse also details abuse by her ex-spouse. The Record reflects that the Applicant's spouse received an approved Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, as a self-petitioning spouse of an abusive U.S. citizen or lawful permanent resident. Letters from the Applicant's spouse's two brothers state further that the Applicant's spouse was distraught before she met the Applicant, and that she has regained her confidence and become a new person with the Applicant.

A behavioral/mental health assessment prepared on January 15, 2015, reflects that the Applicant's spouse stated that her brother was robbed and shot at in Haiti in May 2014, that the Applicant's mother lives in poverty in Haiti, and that she was terrified of losing the Applicant and of his being harmed in Haiti due to unsafe and unhealthy living conditions. The mental health assessment reflects that the Applicant's spouse stated further that the Applicant helps her emotionally, spiritually and financially; and that she has nightmares, feels sad, and is constantly preoccupied about the Applicant's immigration case. The assessment diagnoses the Applicant's spouse with generalized anxiety disorder, characterized by excessive worries, difficulty concentrating, fear for the Applicant's and her safety, and a sense of impending doom due to the Applicant's uncertain immigration situation. The Department of State has issued travel warnings due in part to the security environment in Haiti.

The Applicant's spouse also states that she needs the Applicant financially, she was recently laid off from work, she has been unable to find employment, she depends on the Applicant for financial support, and she would be unable to pay for her mortgage, student loans, and other debts without the Applicant's financial support. Financial evidence reflects an outstanding balance of over \$107,000 on the Applicant's spouse's home, credit card bills, and an outstanding balance over \$55,000 on her student loan. The record includes a pay statement for the Applicant from 2012 and government forms listing his employment. In addition, country conditions reports contained in the record reflect that Haiti is the poorest country in the Western Hemisphere, with 80% of the population living beneath the poverty line.

Upon review, the cumulative evidence in the record sufficiently establishes that the Applicant's spouse would experience hardship beyond that normally experienced upon inadmissibility of a family member if she remains in the United States separated from the Applicant. The evidence demonstrates that the Applicant's spouse suffers from an anxiety disorder due to her concerns about separation and the Applicant's potential circumstances in Haiti, and country conditions evidence corroborate safety concerns for the Applicant in Haiti. We also note the Applicant's spouse's marital history and the role the Applicant has played in helping her emotionally. The record reflects that the Applicant's spouse would experience some financial hardship without the Applicant based on her lack of employment and expenses, although the level of hardship is unclear as the record does not contain current information related to the Applicant's income. The record does not reflect that he could support her from Haiti. Considered in the aggregate, the Applicant has demonstrated that

the cumulative effect of the hardships that his spouse would experience if she remained in the United States rises to the level of extreme hardship.

The evidence in the record is also sufficient to demonstrate that the Applicant's spouse would experience hardship beyond that normally experienced upon inadmissibility of a family member if she relocated to Haiti. The Applicant asserts that he and his spouse would be financially destitute in Haiti and that most of his spouse's family lives in the United States. The Applicant's spouse states that she does not believe she and the Applicant would find work in Haiti, and that she would be unable to meet her financial obligations if she relocated with the Applicant. She indicates further that, although she is originally from Haiti, she has not lived there since she was 10 years old; she no longer knows much about Haitian culture; the country is very poor; and that life is dangerous in Haiti. The mental health assessment reflects further that the Applicant's spouse stated that she would live with the Applicant's mother in Haiti, in a home with no electricity or running water, and with no indoor kitchen or toilet. She stated further that water from a public well is about 15 minutes away from the home and is contaminated. She also worried that she and the Applicant would be harmed in Haiti due to high rates of killings and robberies. Country conditions reports corroborate that Haiti is the poorest country in the Western Hemisphere and that the Department of State has issued travel warnings based in part on the security environment in Haiti. We also note that Haiti is a temporary protected status designated country (TPS) due to difficult conditions in the country, and that the Applicant has been granted TPS status. Considering the Applicant's spouse's lack of ties to Haiti, her ties to the United States, safety issues in Haiti, financial issues in Haiti, and the living conditions at her mother's house, the record is sufficient to establish that the Applicant's spouse would suffer hardship beyond that normally experienced upon inadmissibility or removal if she relocated to Haiti.

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

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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 attempt to procure asylum through willful misrepresentation of a material fact; the Applicant's deportation order issued in 1996 after his failure to depart the country pursuant to a voluntary departure order; and periods of unauthorized presence and employment in the United States. The favorable factors include the extreme hardship that the Applicant's U.S. citizen spouse would face if the Applicant were to relocate to Haiti, regardless of whether she accompanied him or remained in the United States; and the lack of a criminal record. In addition, the Applicant also submits a letter apologizing for the misrepresentations on his asylum application and asking for forgiveness. The documentation reflects that the Applicant became a spiritual leader at his church in May 2010, that he is now the pastor of the church, and his congregation attests to his involvement in the church and community and his good character. Upon review, the positive factors in this case outweigh the negative 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 E-C-*, ID# 14625 (AAO Jan. 12, 2016)