



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

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

MATTER OF J-A-N-M-

DATE: JAN. 28, 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 Honduras, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Philadelphia, Pennsylvania, denied the application. The matter is now before us on appeal. The appeal will be sustained.

In a decision dated November 7, 2014, the Director determined that the Applicant was inadmissible for procuring a nonimmigrant visa and entry into the United States by fraud or willful misrepresentation.<sup>1</sup> The Director further determined that the Applicant had not established that refusal of admission would result in extreme hardship to a qualifying relative. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

On appeal, the Applicant submits a memorandum, an affidavit, and a court document from Honduras. 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.

With respect to the Director's finding of inadmissibility for fraud or willful misrepresentation, the record establishes that the Applicant did not disclose an arrest when he applied for his nonimmigrant visa in June 2012. The Applicant does not contest this finding of inadmissibility on appeal.

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<sup>1</sup> We note that the Director found no other ground of inadmissibility applicable to the Applicant and the record does not establish a conviction or other ground of inadmissibility. Nevertheless, the instant decision applies only to inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act, the ground of inadmissibility indicated on the Applicant's Form I-601 application and addressed in the Director's decision.

(b)(6)

*Matter of J-A-N-M-*

Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1), 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).

The Applicant's spouse asserts that she will experience extreme hardship if she remains in the United States while her spouse relocates abroad as a result of his inadmissibility. The Applicant's spouse declares that she has been together with the Applicant since 2011 and has a good relationship with him and long-term separation from him would cause her hardship. She asserts that the Applicant has taken care of her while she recovered from a car accident that caused a neck injury and when coping with her mother's death. She further maintains that the Applicant has helped her with raising her three children, born in [REDACTED] on her own. The Applicant's spouse also contends that in 2013 she had an operation on her arm and afterwards had to quit her job as a sales person because her merchandise was too heavy to carry. She declares that the Applicant has been her rock, and she relies on him emotionally and financially and is worried that she will not be able to support herself and her two youngest children if the Applicant relocates to Honduras. In his

affidavit, the Applicant states that his spouse needs his financial and emotional support. He indicates that she takes pain medication and will need follow-up surgery on her neck and arm.

In support of the emotional and financial hardship, the Applicant provides documentation establishing that his spouse had an operation, has post-operation lifting restrictions, takes pain medication, and requires ongoing treatment. The Applicant has also submitted evidence establishing his and his wife's financial obligations, and his role as sole financial provider for the family as his wife is unable to work. Furthermore, we note that the U.S. Department of State issued a Travel Warning for Honduras and warns that crime and violence are serious problems in Honduras. When the evidence is considered in the aggregate, the record establishes that the Applicant's spouse will experience extreme hardship were she to remain in the United States while the Applicant relocates to Honduras.

Regarding relocation abroad to reside with the Applicant as a result of his inadmissibility, the Applicant's spouse asserts that her life is in the United States, where she has lived for over a decade. She indicates that she has no family members in Honduras as she was born in the Dominican Republic. Furthermore, we note the Travel Warning for Honduras as detailed above. The record establishes that the Applicant's spouse has never been to Honduras and is unfamiliar with the country, culture, and customs. The record also establishes that the Applicant's spouse has lived in the United States for over 15 years, and that long-term separation from her community, the medical professionals familiar with her diagnosis and treatment plan, and her children will cause her considerable hardship. When the evidence is considered together, the record establishes that the Applicant's spouse will experience extreme hardship if she relocated abroad 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 spouse and children would face if the waiver application were to be denied, the Applicant's family ties to the United States, the Applicant's payment of taxes, the Applicant's gainful employment in the United States, and the Applicant's expressed remorse for his fraud or willful misrepresentation when applying for a nonimmigrant visa. The unfavorable factors in this matter are the Applicant's fraud or willful misrepresentation, as outlined in detail above, and his periods of unlawful presence and employment in the United States. In this case, when the favorable factors are considered together, they outweigh the adverse 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 J-A-N-M-*, ID# 15556 (AAO Jan. 28, 2016)