



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

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

MATTER OF L-A-A-

DATE: JULY 7, 2016

APPEAL OF TAMPA, FLORIDA 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 for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to that of a lawful permanent resident (LPR) must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Field Office Director, Tampa, Florida, denied the application. The Director determined that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, specifically, for seeking to procure entry into the United States in February 2001, and for procuring entry into the United States in September 2001, by presenting a fraudulent passport. The Director then concluded that the Applicant had not established that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in not finding that her spouse's hardship would be extreme.

Upon *de novo* review, we will sustain the appeal. The evidence, including the additional evidence submitted on appeal, considered both individually and cumulatively, establishes that the Applicant's spouse would experience extreme hardship if the Applicant is denied admission. The record also demonstrates that the Applicant merits a waiver as a matter of discretion.

I. LAW

The Applicant is seeking to adjust status to that of an LPR and has been found inadmissible for a fraud or misrepresentation. Specifically, the record establishes that on February 19, 2001, the Applicant attempted to procure entry to the United States by presenting a fraudulent passport. She was expeditiously removed. On September 3, 2001, the Applicant again sought entry to the United States by presenting a fraudulent passport and was admitted.

Section 212(a)(6)(C)(i) of the Act renders inadmissible any foreign national 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 the Act.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national.

Decades of case law have contributed to the meaning of extreme hardship. 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). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was “no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects”). 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); 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). 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).

II. ANALYSIS

The only issue presented on appeal is whether the Applicant’s spouse would experience extreme hardship if the waiver is denied. On appeal, the Applicant argues that her spouse would experience extreme hardship if the waiver is denied, whether he remained in the United States without her or accompanied her to India. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.

A. Hardship

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case her U.S. citizen spouse. With the Form I-601, the Applicant submitted a brief, an affidavit from her spouse, medical records for her spouse, academic and medical documentation for her son, financial documentation, a letter of support, and

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Matter of L-A-A-

biographic and immigration documents. On appeal, the Applicant submits a brief and references previously-submitted material. We have considered all the evidence in the record.

In his affidavit the Applicant's spouse states that he and the Applicant were married in 1989 and have not been apart since 2001 and long-term separation would cause him hardship. He further maintains that the Applicant plays a critical role in the care of their children, born in [REDACTED] and [REDACTED] and their home. The spouse explains that he needs the Applicant to assist with all things as he works two jobs, as a full time store manager and as a part time ATM machine technician, to meet their financial obligations. The spouse further maintains that he suffers great emotional and psychological stress over the Applicant's immigration situation. He states that he has high cholesterol and is in the initial stages of diabetes so he needs the strong support system that the Applicant provides. He maintains that if the Applicant were in India his health would deteriorate and he could not properly care for their children. The spouse further declares that it is documented that females on their own are not safe in India, so if the Applicant returned to India he would be concerned for her safety and well-being.

Moreover, the Applicant's spouse maintains that since 2011 their youngest son has received occupational and speech therapy, that he has been diagnosed with "expressive language delay" and "selective mutism" and that he is now stuttering. The spouse contends that their son will require years of medical evaluation and treatment, and that it is the Applicant who assists their child with school work and with counselors while he is working two jobs. Finally, the Applicant's spouse maintains that based on his income, he cannot afford to hire anyone to care for the children while he is working.

In support of the above assertions, the Applicant has submitted medical documentation establishing that her spouse has been diagnosed with high cholesterol and is at risk for diabetes. The Applicant has also submitted documentation establishing that her son is receiving occupational and physical therapy services and has an individual educational plan at school. Financial documentation has also been submitted stating that the Applicant's spouse is working two jobs, one full-time and one part-time, to meet the financial obligations of the household.

Having reviewed the preceding evidence, we find it to establish that the Applicant's spouse would experience extreme hardship were he to remain in the United States while the Applicant relocates abroad as a result of her inadmissibility. The record establishes that the spouse is experiencing anxiety over his health and his concerns for their children, most notably the youngest son who is experiencing speech delays that require ongoing evaluation and treatment. The record also establishes that the spouse is working two jobs to meet the family's financial obligations and becoming sole caregiver and provider to two young children without the presence and support of the Applicant would cause him hardship. Considered in the aggregate, the record establishes that the Applicant's spouse would face extreme hardship if the Applicant is unable to reside in the United States.

B. Discretion

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 case are the extreme hardship the Applicant’s spouse and children would face if the Applicant is unable to reside in the United States, her 27 years of marriage, the Applicant’s involvement in community activities, her length of residence in the United States, the passage of more than 14 years since her immigration violations, a letter of support on behalf of the Applicant, and the Applicant’s apparent lack of criminal record. The negative factors in this case are the Applicant’s attempted entry to the United States in February 2001, by fraud or misrepresentation, the Applicant’s entry to the United States in September 2001, by fraud or misrepresentation, periods of unauthorized presence in the United States, and the Applicant’s removal from the United States.¹ In this case, when the favorable factors are considered together, they outweigh the adverse factors such that a favorable exercise of discretion is warranted.

¹ The Applicant was removed from the United States pursuant to section 235(b)(1) of the Act on February 19, 2001, and reentered the United States in September 2001. She is also inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), and requires an approved Form I-212, Application for Permission to Reapply for Admission, in order to adjust to LPR status.

III. CONCLUSION

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 L-A-A-*, ID# 14361 (AAO July 7, 2016)