



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

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

MATTER OF K-S-F-

DATE: JULY 11, 2016

APPEAL OF NORFOLK, VIRGINIA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Jamaica, seeks a waiver of inadmissibility for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) § 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 to lawful permanent resident must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver to self-petitioners under the Violence Against Women Act (VAWA) if refusal of admission would result in extreme hardship to the self-petitioner or to a qualifying relative or qualifying relatives.

The Field Office Director, Norfolk, Virginia, denied the application. The Director concluded that the Applicant was inadmissible for fraud or misrepresentation. The Director further determined that the Applicant had not established extreme hardship to herself or to a qualifying relative.

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 extreme hardship to herself and her children.

Upon *de novo* review, we will sustain the appeal.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a fraud or misrepresentation, specifically for gaining entry into the United States by presenting a passport that she purchased in Jamaica.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), 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 provides for a waiver of this inadmissibility in the case of a VAWA self-petitioner if the self-petitioner demonstrates that refusal of admission would result in extreme hardship

to the self-petitioner or to his or her United States citizen, lawful permanent resident, or qualified alien parent or child.

Section 101(b)(1) of the Act defines the term “child” to mean an unmarried person under 21 years of age who is a child born out of wedlock through whom a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother.

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 Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.<sup>1</sup> The issue on appeal is whether the Applicant demonstrated extreme hardship to herself or her child if the waiver is denied.

### A. Waiver

As the Applicant is a VAWA self-petitioner, her qualifying relatives include herself and her U.S. citizen son. Her 22-year-old daughter is not a qualifying relative because she is over the age of 21 and is therefore not a “child” under the Act. See section 101(b)(1) of the Act.

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<sup>1</sup> In her affidavit, the Applicant states that in 1997, she entered the United States by presenting a passport that she purchased in Jamaica.

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In support of her hardship claims, the Applicant submitted with the Form I-601 statements from herself and her daughter, son, sister, co-worker, and friend. She also submitted copies of photographs, tax and financial records, a letter from the superintendent at her son's school, documentation of her daughter's military service, and reports on Jamaica. On appeal, the Applicant submits her medical records, a statement from her son's grandmother, copies of immigration documents, a power of attorney document, child support documentation, her son's school records, and information on Jamaica.

The Applicant claims that she and her son would suffer financial, emotional, physical, and educational hardship if they were to relocate to Jamaica. She asserts that Jamaica's job market is unstable and she would be unable to find employment. She claims that she has only one family member in Jamaica, her mother, who is unable to support her and who is in the process of immigrating to the United States. She maintains that the cost of living in Jamaica is comparable to the United States but the average salary is significantly lower than in the United States. She asserts that in Jamaica they would have a far lower living standard and inferior healthcare. The Applicant submitted documentation referencing the poor employment and economic conditions in Jamaica. Regarding educational hardship, the Applicant asserts that her son is in high school and relocation would disrupt his studies, place him in an unfamiliar foreign country, and adversely affect his future opportunities. A [redacted]-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, was found to suffer extreme hardship if she relocated to Taiwan. *Kao and Lin*, 23 I&N Dec. at 50. We find *Matter of Kao and Lin* to be persuasive here. To uproot the Applicant's son at this stage of his education and social development and relocate him to Jamaica would cause him extreme hardship. The record therefore establishes that denial of the waiver would result in extreme hardship to the Applicant's son if he relocated to Jamaica.

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. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident with the social and humane considerations presented 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). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the foreign national and his or her family, service in the U.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 good character. *Id.*

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The favorable factors in this matter are the extreme hardship the Applicant's son would suffer if the waiver application were denied, the letters of support commending the Applicant's character, her payment of taxes, her family and community ties to the United States, and the passage of 18 years since her fraud or willful misrepresentation with respect to her entry to the United States. The unfavorable factors in this matter are the Applicant's fraud or willful misrepresentation, her placement in removal proceedings, and her periods of unlawful status 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.

### 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. She has demonstrated extreme hardship to her son and that a waiver is warranted as a matter of discretion. Accordingly, we sustain the appeal.

**ORDER:** The appeal is sustained.

Cite as *Matter of K-S-F-*, ID# 16152 (AAO July 11, 2016)