



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

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

MATTER OF R-A-M-F-

DATE: JULY 12, 2016

APPEAL OF DES MOINES, IOWA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Guatemala, 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 lawful permanent residence 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, Des Moines, Iowa, denied the application. The Director concluded that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States through fraud or misrepresentation. The Director then found that the Applicant had not established extreme hardship 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 by not issuing a request for further evidence to cure deficiencies in his waiver application.

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

I. LAW

The Applicant is seeking is seeking to adjust status to lawful permanent resident and has been found inadmissible for fraud or misrepresentation, specifically for failing to disclose his arrests in his immigrant visa application at a U.S. consulate in 2005. 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.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides, in pertinent part:

(1) The Attorney General may, in the discretion of the Attorney General, 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 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. . .

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 qualifying relative would experience extreme hardship if the waiver is denied. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record. The evidence in the record, considered both individually and cumulatively, does not establish that the Applicant’s qualifying relative would experience extreme hardship. The record does not contain sufficient evidence to establish that the claimed hardship rises above the common consequences of removal or refusal of admission to the level of extreme hardship. Because there is no showing of extreme hardship, we will not address whether the Applicant merits a waiver as a matter of discretion.

A. Inadmissibility

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As stated above, the Applicant has been found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, specifically for failing to disclose his arrests in Guatemala for theft and rape charges in his immigrant visa application and during his interview with a consular officer. The Applicant has not disputed the finding of inadmissibility. The record also reflects that on [REDACTED] 2013, the Applicant was found guilty of Fifth Degree Theft, in violation of Iowa Code Annotated 714.2.(5). The court sentenced him to pay a fine. The Director did not address whether this conviction was for a crime involving moral turpitude or whether it rendered the Applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, because the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), we will not determine whether the applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

B. Waiver

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case the Applicant's U.S. citizen mother. In support of his claim of hardship to his mother, the Applicant initially submitted an affidavit from his mother, school information for his daughter, medical records for his children and his mother, financial documentation, letters of support, and civil documents. On appeal, the Applicant submitted an updated statement from his mother, letters of support, medical information for his mother, , and copies of previously-submitted materials.

In her affidavit the Applicant's mother states that the Applicant and his family live with her, she is unemployed due to medical problems, and she depends financially on the Applicant and could not pay her mortgage without him. The mother states that her income is low, that she took a personal loan for repairs to her home, and that the Applicant pays the bills and other expenses, including prescriptions and groceries. Financial documents submitted to the record include income tax returns for the mother, receipts for rent from the Applicant, a mortgage statement from 2015, billing statements, the Applicant's pay statements, and the mother's personal loan documentation from 2014 that also contains the name of the Applicant's brother.

The Applicant's mother states that she has back pain that radiates to her arms and legs, that she takes medications for several conditions including anxiety, and that a doctor referred her to counseling. She maintains that the Applicant is the family member most interested in helping her and that she depends on him to do maintenance and chores that she cannot do. She further states that without him she would be unable to go to her doctor and might forget to follow her doctor's orders. Letters from the mother's other adult children indicate that the Applicant provides care for their mother, but none offer an explanation as to why they are unable to assist their mother.

A July 2015 note from a health clinic states that the Applicant's mother would have an emotional setback if the Applicant left her, and a note from a social worker states that the Applicant's mother had started therapy for depression and an antidepressant prescribed by her primary care provider. A list of prescription medications for the Applicant's mother includes depression medication, but the

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record contains no further information about any mental health counseling the Applicant's mother is receiving. A medical report indicates that the Applicant's mother has low bone mass and increased risk of fracture, but there is no further explanation from a physician of the mother's condition or any treatment that requires the Applicant's physical presence in United States.

The Applicant's mother further contends that without the Applicant's children she would collapse because she depends on them emotionally. She maintains that the Applicant's children would go with him to Guatemala because she cannot provide for them, and that she would worry about the development of the Applicant's daughter, who she fears may lack medical treatment in Guatemala for a seizure condition. The record contains medical documentation from 2008 through 2014 for the daughter, who was born in [REDACTED]. Although the documents indicate routine visits such as for fever or allergies, they list active problems including seizures. The medical records indicate that the Applicant's daughter had seizures in September and November 2008 and had follow up medical visits in 2009 and 2010. However, there is no indication in the record that the daughter has continued problems involving seizures or any other serious medical condition.

We recognize that the Applicant's mother will endure hardship as a result of separation from the Applicant. However, we find that the evidence submitted to the record is insufficient to establish that the Applicant's mother would experience extreme hardship due to separation from the Applicant. The mother states that she depends on the Applicant financially and to provide other assistance, and letters from the mother's other adult children indicate that the family is close. There is no explanation however, of why the mother's other children would be unable or unwilling to assist her in the Applicant's absence. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute 'extreme hardship.'" *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

Medical documentation in the record contains little detail or further explanation from the mother's treating physician of her current conditions or how it requires the Applicant's physical presence. The mother also states that she is emotionally dependent on the Applicant's children, but there is nothing in the record to indicate that the children would return to Guatemala with the Applicant if he were removed. The difficulties that the Applicant's mother would face as a result of her separation from the Applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

We also find that the record does not establish that the Applicant's mother would experience extreme hardship if she were to relocate to Guatemala. The mother asserts that all her children and grandchildren are in the United States and that she has no family in Guatemala. She cites country information reports about violent crime and poverty that indicate 51 percent of the population lives in rural areas and seven out of 10 people of indigenous decent live in poverty. The reports submitted describe general country conditions, but the record does not address where the Applicant would live if he returned to Guatemala or indicate how conditions would specifically affect the Applicant's

mother. The record therefore does not establish that safety and economic concerns would rise to level of extreme hardship if the Applicant's mother returned to Guatemala, her native country.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the Applicant's mother, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the Applicant has not established extreme hardship to a qualifying relative as required under section 212(i) of the Act.

C. Discretion

As the Applicant has not demonstrated extreme hardship to a qualifying relative, we need not consider whether the Applicant warrants a waiver in the exercise of discretion.

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 not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of R-A-M-F-*, ID# 16209 (AAO July 12, 2016)