



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

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

MATTER OF V-C-H-

DATE: JULY 12, 2016

APPEAL OF TUCSON, ARIZONA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Mexico, seeks a waiver of the ground 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 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, Tucson, Arizona, 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 her spouse, her qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant claims that the Director erred in finding her inadmissible for fraud or misrepresentation. She further claims that the Director erred in finding that her spouse would not experience extreme hardship if the waiver is denied.

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 fraud or misrepresentation, specifically for procuring admission into the United States in February 2014 by misrepresenting her intentions in coming to the United States.

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 claimed hardship to the Applicant’s spouse upon separation is primarily emotional hardship and financial hardship from having to support two households. The claimed hardships upon relocation are separation from family in the United States, exposure to violent crime, and inability to find gainful employment in Mexico. The evidence in the record, considered cumulatively, does establish 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.

### A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation for procuring admission into the United States in February 2014 by misrepresenting her intentions in coming to the United States.

The principal elements of a misrepresentation that renders a foreign national inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

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A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

*Id.* at 447. The Supreme Court has addressed the issue of material misrepresentations in *Kungys v. United States*, 485 U.S. 759 (1988). The Supreme Court stated that misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

The Applicant asserts that she is not inadmissible for fraud or misrepresentation. The Applicant maintains that on February 16, 2014, at the port of entry, she presented herself for admission into the United States as a temporary visitor. She states that since the immigration inspector had not asked her any questions she had not misrepresented her intentions in coming to the United States.

The record establishes that on February 16, 2014, the Applicant applied for entry to the United States by presenting a B1/B2 Visa/Border Crossing Card. Although the Applicant presented herself as a nonimmigrant, the Applicant stated at her adjustment of status interview that she in fact had started to live in the United States with her spouse and child on December 25, 2013. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, the evidence in the record establishes that the Applicant misrepresented her intentions when she entered the United States with a B1/B2 Visa/Border Crossing Card in February 2014. Although she presented herself as a nonimmigrant visitor, the record establishes that she intended to reside in the United States with her family. As such, based on the evidence in the record, the Applicant is inadmissible under section 212(a)(6)(C) of the Act for fraud or willful misrepresentation.

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 spouse. In support of her claim of hardship to her spouse, the Applicant submitted statements from her spouse and herself, her medical reports, financial documentation, country information on Mexico, and civil documents.

Regarding financial hardship, the Applicant's spouse asserted that he would not be able to care for their daughter, born in [REDACTED] while working full time. He stated that his mother and sister also work and are unable to help with his child. He further stated that he would be unable to hire a caregiver for his child. The Applicant and her spouse stated that if he remains in the United States in her absence he would be financially strained from supporting himself in the United States and the Applicant in Mexico. In support of the hardship claim, the Applicant submitted documents, bills,

bank statements, rental payment statements, wage statements, and income tax returns for the Applicant's spouse. The Applicant also submitted evidence establishing that she is pregnant with their second child. The spouse's most recent income tax return shows that he earns about \$17,000 and included his father as a dependent, and wage statements show he earns \$9.79 an hour. Rental pay statements show a rent of \$1,705. The Applicant and her spouse indicate that the Applicant cares for their child while the spouse is at work. Although the Applicant has not submitted estimated expenses for child care costs, given the spouse's low income it is reasonable to conclude that he would experience financial hardship to pay for childcare for his daughter.

As for emotional hardship, the Applicant and his spouse asserted that they have known each other since they were young and have a close relationship. He stated that he would worry about the well-being of the Applicant and his child if he remains in the United States and they live in Mexico. He indicated that Tijuana, where they are from, is a dangerous place to live. The Applicant stated that someone burglarized her mother's house in Tijuana. She further stated that men with guns entered a restaurant in Tijuana and started to fire at everyone and shot her sister and her sister's fiancé, who died from his wounds. In support of these hardship claims, the Applicant submitted U.S. Department of State travel warnings about violent crime in Mexico.

The Applicant contends that if her spouse relocated to reside with her it would be difficult to find a job that pays a salary to support a family and provide health care, which would then increase the spouse's emotional stress due to financial strain. The spouse maintains that to relocate to reside with the Applicant he would have to leave his job in the United States, where he is expecting a salary increase, and he would be unable to keep up with their debt payments. The Applicant states that she and her spouse would have nowhere to live in Mexico as her mother's house does not have sufficient space, and they would have difficulty finding a job with a salary to support the family.

Here we find that based on the evidence in the record, when considered in its totality, the Applicant has established that her spouse would experience extreme hardship were she unable to reside in the United States. If the Applicant were unable to reside in the United States her spouse would be concerned about her safety and possibly that of their children, were they to accompany the Applicant, and he would have difficulty providing care for them in the United States. He would also face the financial strain of providing for them given his relatively low income. Accordingly, we find that the circumstances presented in this application rise to the level of extreme hardship.

### C. 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 factor in this case is the hardship to the Applicant's spouse and child if the waiver is denied. The adverse factors are the Applicant's procuring admission to the United States by fraud or misrepresentation and her unlawful status in the United States. In this case, when the favorable factors are considered together, they outweigh the adverse factor 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. Accordingly, we sustain the appeal.

**ORDER:** The appeal is sustained.

Cite as *Matter of V-C-H-*, ID# 16377 (AAO July 12, 2016)