



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

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

MATTER OF D-M-

DATE: JULY 13, 2016

APPEAL OF CHICAGO, ILLINOIS 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 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, Chicago, Illinois, denied the application. The Director concluded 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 states that the Director erred in not finding extreme hardship to her spouse. The Applicant states the record contains sufficient evidence to establish financial, psychological, and physical hardships to her spouse which rise to the level of extreme hardship, upon both separation and relocation. The Applicant further explains that, since the time of the Director's decision, she has undergone major surgery to remove a brain tumor and this will result in additional hardship to her spouse and family due to her inadmissibility.

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

**I. LAW**

The Applicant is seeking to adjust status to that of a lawful permanent resident and has been found inadmissible for a fraud or misrepresentation. Specifically, the Applicant used the passport and temporary visa of her sister to enter the United States on July 31, 1997, misrepresenting her identity as that of her sister. The Applicant admitted that she entered using her sister's passport in a sworn statement, dated March 29, 2013, and does not contest her inadmissibility on appeal.

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 issue on appeal is whether the Applicant has established extreme hardship to a qualifying relative, in this case the Applicant’s spouse. The Director concluded that the Applicant had not established extreme hardship to a qualifying relative. On appeal, the Applicant claims the Director erred in not finding extreme hardship to her spouse. The Applicant explains that if she were removed, her spouse would experience physical hardship from having to assume additional parenting duties, financial hardship from having to support two households, and psychological hardship from having to separate from her. The Applicant also explains that upon relocation her spouse would experience extreme hardship because he has resided in the United States for 27 years, would lose his steady, well-paying job that provides their family with medical insurance and he would have to separate from his children in the United States, whom he is supporting financially. The Applicant further explains that she recently underwent major brain surgery to remove a benign tumor, resulting in a psychological hardship for her spouse and children. She states that if she were

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removed neither she nor her spouse would be able to provide sufficient income to cover the costs of her medical care in Jamaica.

The record includes documentation supporting the Applicant's claims of hardship. We find the record to establish that the Applicant's spouse will experience extreme hardship, and we will sustain the appeal.

#### A. Waiver

In this case, the Applicant must demonstrate that denial of the application would result in extreme hardship to her spouse. The record includes, but is not limited to, statements from the Applicant and her spouse; statements from friends and family members; copies of tax returns and financial records; a psychological assessment of the Applicant's spouse; birth records and marital records; university transcripts; photographs of the Applicant, her spouse and their children; a human rights report on Jamaica from the U.S. Department of State; copies of medical bills, utility bills and an apartment lease; a copy of a dental bill for the Applicant's spouse; credit card statements; a monthly expenses chart; and documentation pertaining the Applicant's February 2014 neurosurgery.

The Applicant states on appeal that the Director failed to properly examine and weigh the evidence in the record pertaining to the extreme hardship of her spouse. The Applicant states that her spouse is faced with extreme psychological and financial hardship upon both relocation and separation scenarios. She explains that her spouse has three children by prior marriages, two of whom he is obligated to support financially, that her spouse supports her and her young son financially. She explains that together they pay their monthly bills and that her spouse's long-term employment with [REDACTED] provides them will stable income and health insurance benefits. The Applicant explains that her spouse will experience psychological hardship if she and her son are forced to relocate to Jamaica. She also states that if her young son did not relocate with her then her spouse would experience physical hardship as a single parent.

The Applicant claims on appeal that she has recently undergone major neurosurgery to remove a benign brain tumor, resulting in psychological hardship for her spouse and son. She states that the surgery resulted in a loss of hearing and partial paralysis of the right side of her face. She states that, if she were removed from the United States she would not have access to sufficient medical care in Jamaica to monitor her brain condition, explaining that neither she nor her spouse would be able to afford her medical care in Jamaica. She states that her spouse is faced with the possibility of losing his spouse if she is removed.

The Applicant claims her spouse will experience financial hardship due to the loss of her income if she removed, or the loss of both of their incomes if he were to relocate to Jamaica with her. The Applicant explains that they have car bills, medical bills, dental bills, an apartment lease, tuition costs for her spouse's university classes, credit card bills, and financial obligations to support children from prior marriages. If she is removed, he will no longer be able to meet their financial

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obligations, particularly since he would have to support two households and pay for the costs of her continued medical treatment in Jamaica.

With regard to the financial hardship the Applicant's spouse will experience, the record contains tax returns, utility bills and other financial records, including a bill for the Applicant's spouse for \$5,000 for dental services. A 2011 tax return for the Applicant and her spouse indicates that, as a household, they earned \$84,502. In 2012 they earned \$74,428. In 2013, they earned \$113,020. An employment letter in the record indicates the Applicant's spouse earns \$74,724 annually, and has been employed with [REDACTED] since 2000.

The record contains numerous documents supporting the claims of obligations on the monthly breakdown. Court documents submitted into the record establish that the Applicant's spouse owes monthly support payments for children from a previous relationship. The record also contains invoices and bills for other financial obligations, including automobile payments, educational loan payments, credit card bills and household utilities.

With regard to hardship experienced upon relocation, the record contains evidence documenting the Applicant's spouse's employment, his long term residence in the United States, tax returns, orders of support for the Applicant's spouse's children from a prior marriage, and the presence of other financial obligations such as automobile payments and medical/dental costs. The record also contains a human rights report on Jamaica published by the U.S. State Department. The record indicates that the Applicant's spouse has resided in the United States for 27 years. There is an employment letter in the record verifying that he is employed with a major telecommunications company and has been since November 2000. Medical records pertaining to the Applicant indicate that his employment-based health insurance covered her medical expenses. The support orders in the record establish that the Applicant's spouse is required to support two of his children from previous relationships.

This record establishes that the Applicant's spouse would have to sever the family ties he has in the United States if he were to relocate to Jamaica with the Applicant. In addition, the record establishes that if he relocated with the Applicant, he would lose his employment, which provides health insurance and the ability to support his other children financially. When the evidence of hardship is examined in an aggregate context, we find that the emotional and financial hardships upon relocation, including separation from his children in the United States and having to readjust to conditions in Jamaica after 27 years, rise to the level of extreme hardship.

#### 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.*

The negative factor in this case is the Applicant's use of her sister's passport and visa to enter the United States. The record contains a sworn statement from the Applicant admitting that she knowingly used her sister's passport and visa to enter the United States. The Applicant has accepted responsibility for her actions and has expressed remorse.

The positive factors in this case include the hardship the Applicant's spouse and son would experience upon her removal, the Applicant and her spouse's long-term residence in the United States, the lack of any criminal record during the Applicant's residence in the United States and the Applicant's recent treatment for acoustic neuroma, a benign brain tumor which had to be removed with neurosurgery. The record contains many letters from the Applicant and her spouse's friends, family and church members attesting to her moral character. A letter from the Applicant's pastor attests to the Applicant's commitment to the church and her family and her assistance with the children's ministry program at their church.

We find that the positive factors outweigh the negative factors in this case, and we will exercise discretion in favor of the Applicant.

### 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. The record demonstrates that the Applicant's spouse will experience extreme hardship due to the Applicant's inadmissibility. The record also demonstrates that the favorable factors outweigh the negative factors in this case, warranting a favorable exercise of discretion, and we sustain the appeal.

**ORDER:** The appeal is sustained.

Cite as *Matter of D-M-*, ID# 16797 (AAO July 13, 2016)