



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

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

MATTER OF I-M-A-

DATE: JULY 14, 2016

APPEAL OF LAS VEGAS, NEVADA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Nigeria, 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 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, Las Vegas, Nevada, denied the application. The Director concluded that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. The Director then determined that the Applicant had not established that denial of admission would result in extreme hardship to her spouse, the only qualifying relative.

We dismissed the appeal, and remanded it for the Director to consider whether the Applicant's current Form I-130, Petition for Alien Relative, should be revoked pursuant to section 204(c) of the Act. We will now reopen the matter sua sponte based on the field office's review of the matter.

Upon *de novo* review, we will sustain the appeal. The evidence, including the additional evidence submitted on appeal, establishes that the Applicant's spouse would experience extreme hardship and that the Applicant merits a waiver as a matter of discretion.

I. LAW

The Applicant is seeking to adjust to LPR status and has been found inadmissible for a fraud or misrepresentation, specifically for procuring a nonimmigrant visa by fraud or misrepresentation.

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 two issues presented on appeal include whether the Applicant is inadmissible for fraud or misrepresentation, and whether her spouse would experience extreme hardship if the waiver is denied.

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, specifically the Applicant misrepresented her marital status in order to obtain a nonimmigrant visa.

The record reflects that the Applicant divorced her first spouse in Nigeria on January 11, 2000. In 2001, the Applicant applied for and received a nonimmigrant visa to enter the United States. During this process the Applicant made a material misrepresentation in claiming to be married to her former spouse when in fact she was divorced.

(b)(6)

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On appeal, the Applicant asserted that she never intended to lie on her visa application form; and she is sorry for trusting someone else with filling out her visa application and not verifying the information before signing it.

“[T]he test of whether concealments or misrepresentations are “material” is whether they can be shown by clear, unequivocal, and convincing evidence to have been predictably capable of affecting, *i.e.*, to have had a natural tendency to affect, the Immigration and Naturalization Service's decisions.” *Kungys v. United States*, 485 U.S. 759, 760 (1988). The Board of Immigration Appeals (the Board) has held that a misrepresentation is material if either the alien is excludable on the true facts, or 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 proper determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

By stating that she was married, when in fact she was divorced, when applying for a nonimmigrant visa in 2001, the Applicant led the U.S. Consulate General in [REDACTED] to believe that she had close family ties, namely, a husband, in her home country. By omitting the fact that she was divorced, she cut off a line of inquiry which was relevant to the Applicant's request for a nonimmigrant visa.

The Applicant had the duty and the responsibility to review the forms (and obtain translations if any questions on the forms were not clear to her) prior to signing. As such, the Applicant is inadmissible under section 212(a)(6)(C) of the Act .

B. Hardship

In this case, the Applicant must demonstrate that denial of the application would result in extreme hardship to her qualifying relative or qualifying relatives, in this case the Applicant's spouse. With the Form I-601, the Applicant submitted statements from her spouse, his daughter and friends. She also submitted copies of medical records, financial documents, photographs, and immigration records, as well as country condition materials. On appeal, the Applicant submitted a brief.

The Applicant claims that if her spouse remains in the United States without her, he will suffer emotional, psychological and financial hardship. As to the emotional hardship, the Applicant and her spouse married in 2014, and the Applicant, through counsel, claims that the spouse's emotional and mental state has dramatically improved since their marriage. Further, the Applicant indicates that the spouse has been on multiple medications for depression, and that, with her help, he has been able to cut down on his drug dependency tremendously. Similarly, the spouse, in his affidavit, confirms that he was depressed and had almost lost hope of meeting anyone who could become his wife, before he met the Applicant. He also states that he has been gradually reducing his dependency on drugs and has turned his life around since he met the Applicant. The Applicant has submitted documentation establishing the numerous medications prescribed to her spouse, including antidepressants.

As to the financial hardship, the spouse states that the Applicant contributes financially, and that he no longer struggles or has to worry about his financial problems. He also indicates that without her income, he would collapse financially. Documentation establishing the Applicant's employment and the relevance of her income to the household finances has been submitted.

Concerning relocation to Nigeria, the Applicant claims that her spouse would suffer dangerous country conditions in Nigeria if he were to relocate with her. The spouse states that he will be perceived as a rich American and will be a target for criminals. The Applicant also indicates that he has an extensive family and work network in the United States. The Applicant and spouse also assert that the spouse would lose their home if he relocated to Nigeria. Further, the Applicant and her spouse reference and document the problematic country conditions in Nigeria, including kidnapping, robberies, and armed attacks. The record established that the Applicant's spouse, in his mid-60s, has lived in the United States since 1981 and became a U.S. citizen in 1988. He has four adult children, a home, and long-term gainful employment in the United States.

Having reviewed the preceding evidence, we find that the Applicant's spouse would experience extreme hardship if this waiver application is denied. When the evidence is considered together, it establishes that were the Applicant refused admission into the United States, her spouse would experience 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. *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 favorable factors in this case are the hardship to the Applicant's spouse if the waiver application is denied; letters of support for the Applicant; the Applicant's long-term residence in the United States; her community ties to the United States; the Applicant's employment as a licensed practical nurse; home ownership; the Applicant's apparent lack of a criminal record; and the passage of more than 15 years since the Applicant's fraud or willful misrepresentation with respect to her inadmissibility. The adverse factors in this case are the Applicant's fraud or misrepresentation and

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periods of unlawful presence 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.

ORDER: The appeal is sustained.

Cite as *Matter of I-M-A-*, ID# 14759 (AAO July 14, 2016)