



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

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

MATTER OF E-D-

DATE: JULY 15, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Haiti, 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 Director, Newark, New Jersey, Field Office, denied the application. The Director concluded that the Applicant was inadmissible for fraud or misrepresentation. The Director then found that the Applicant had not established extreme hardship to a qualifying relative. We dismissed a subsequent appeal, finding that the record contained insufficient evidence to show that the hardships faced by the Applicant's spouse rise to the level of extreme hardship.

The matter is now before us on a motion to reconsider. In the motion, the Applicant submits additional evidence and claims that we erred by not considering the evidence of conditions in Haiti, his spouse's emotional hardship, and her custody of his children.

Upon review, we will grant the motion and 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, in February 2001, the Applicant attempted to procure admission to the United States using a photo-substituted Haitian passport and a counterfeit Temporary I-551, Alien Documentary Identification and Telecommunication (ADIT) Stamp.

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 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 Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.¹ The only issue presented on motion is whether the Applicant’s spouse would experience extreme hardship if the waiver is denied, whether she remains in the United States without him or accompanies him to Haiti. He claims that his spouse will suffer extreme financial and emotional hardship in remaining in the United States in his absence. He further asserts that she will experience financial, emotional, and physical hardship upon relocation to Haiti.

A. Hardship

¹ The Applicant admitted to paying \$5,500 for the photo-substituted Haitian passport containing a counterfeit Temporary I-551, Alien Documentary Identification and Telecommunication (ADIT) Stamp. He was placed in expedited removal proceedings, and in 2007, an Immigration Judge ordered that the Applicant be removed to Haiti. In June 2009, an appeal to the Board of Immigration Appeals was dismissed.

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In this case, the Applicant must demonstrate that denial of the application would result in extreme hardship to his U.S. citizen spouse. In support of his hardship claim, the Applicant submitted the following evidence. With the Form I-601, he submitted statements from himself and his spouse, their daughter's medical documentation, birth certificates of his children (born in [REDACTED] and [REDACTED]), and civil documents. With the appeal, he submitted country information on Haiti. With the motion, the Applicant submits his child's birth certificate (born in [REDACTED]), a psychological evaluation of his spouse, and additional country information on Haiti. The record also includes financial documentation submitted in conjunction with the Applicant's Form I-485, Application to Adjust Status, and Form I-821, Application for Temporary Protected Status.

In our decision dismissing the appeal, we concluded that the evidence in the record was insufficient to show that the emotional and financial hardships faced by the Applicant's spouse in remaining in the United States without him were beyond the common results of removal or inadmissibility. We further found that the Applicant did not state specifically what hardship his spouse would experience were she to relocate to her native Haiti with him and had submitted only general country conditions information on Haiti and did not indicate whether his spouse had family ties in the United States or Haiti.

On motion, the Applicant maintains that his spouse will suffer financial, emotional, and medical hardship upon relocation to Haiti. The psychological evaluation of his spouse by a mental health therapist states that his spouse is fearful of exposing her family to violent crime in Haiti and of being unable to obtain employment or provide basic needs for her family. It states that his spouse had left Haiti 13 years ago because she could not provide for herself. His spouse's Form G-325 reflects that her parents currently reside in Haiti. The evaluation indicates that the Applicant's spouse suffers from high blood pressure and type 2 diabetes and worries about medical care in Haiti for herself and their child, born in [REDACTED] and her stepchildren. It further states that three of her stepchildren are U.S. citizens and live with them, and she has anxiety about the education they will receive in Haiti.² The evaluation states that the Applicant's spouse has major depressive disorder and symptoms that include excessive worry and apprehension about his immigration situation. The evaluation recommends counseling and possibly psychotropic medication; it states that his spouse's depression will increase, which will potentially worsen her mental condition.

The Applicant also submitted an account of conditions in Haiti highlighting a cholera epidemic, international aid, and political morass in the country. Previously-submitted country information includes a human rights report. We take administrative notice that the U.S. Department of State issued a travel alert stating that the political and security environment in Haiti remains uncertain. We take further notice that Haiti has been designated for Temporary Protected Status (TPS) after a major earthquake in 2010 devastated the country. The record contains evidence showing that the Applicant currently is a beneficiary of TPS. It also establishes that the health and physical safety of his spouse and their [REDACTED] child would be in jeopardy in Haiti and that his spouse would have

² The record does not contain sufficient evidence to demonstrate that the Applicant has legal custody of his children from a prior relationship.

considerable stress over her and her child's wellbeing if they were to relocate to Haiti. When the evidence of hardship is considered in the aggregate, it establishes that the Applicant's spouse would suffer extreme hardship if she relocates abroad.

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 adverse factors in the present case are the Applicant's fraud or misrepresentation; his placement in removal proceedings, the removal order against him; and his unlawful status and employment in the United States. The favorable factors include the hardship to his spouse and four U.S. children; his residence in the United States for 15 years; and the passage of 15 years since his fraud or misrepresentation. We find that the Applicant has established that the favorable factors outweigh the adverse factors and that a favorable exercise of discretion is therefore 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. He has demonstrated that his spouse would suffer extreme hardship if she relocates abroad and that he merits a favorable exercise of discretion. Accordingly, we grant the motion and sustain the appeal.

ORDER: The motion to reconsider is granted and the appeal is sustained.

Cite as *Matter of E-D-*, ID# 16572 (AAO July 15, 2016)