



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

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

MATTER OF M-A-I-

DATE: JULY 28, 2016

APPEAL OF SEATTLE, WASHINGTON FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Somalia, 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, Seattle, Washington, Field Office, 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 submits additional evidence and states that the Director erred by determining that her spouse will not suffer extreme hardship if he separates from her or relocates with her to Somalia.

Upon *de novo* review, we will sustain the appeal because the Applicant has demonstrated extreme hardship to her spouse upon relocation to Somalia and that a waiver is warranted as a matter of discretion.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a fraud or misrepresentation, specifically that in April 2001, she entered the United States by presenting a passport that did not belong to her.

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 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 appeal is whether the Applicant’s spouse would experience extreme hardship whether he remains in the United States without her or accompanies her to Somalia. The claimed hardship to her spouse upon separation consists of emotional hardship and the loss of the Applicant’s economic contribution and care for their children. The claimed hardships upon relocation are exposure to harm from the war and their daughters being at risk for female genital mutilation (FGM).

A. Waiver

In this case, the Applicant must demonstrate that denial of the application would result in extreme hardship to her U.S. citizen spouse. The record contains references to hardship the Applicant’s children would experience if the waiver application were to be denied. However, children are not

¹ The Applicant indicated on her applications for asylum and adjustment of status and in statements submitted in support of those applications that she entered the United States using a passport that belonged to someone else.

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qualifying relatives; their hardship will only be considered to the extent that it causes hardship to her spouse.

With the Form I-601, the Applicant submitted a statement, financial documentation, school documents for her children, letters of support, country information for Somalia, and civil documents. The record also contains information pertaining to the Applicant's application for asylum and withholding of removal. On appeal, the Applicant submitted statements from herself and her spouse, additional financial documentation, updated school records for their children, letters from her children, family photographs, a letter from a doctor, an employment letter, and updated country information for Somalia.

Regarding relocation to Somalia, the Applicant and her spouse assert that they are fearful that their daughters would be subjected to female genital mutilation, which the Applicant states that she suffered as a child. A letter from a physician confirms his spouse has significant scarring and emotional trauma related to complications from the procedure. The Applicant's spouse states that he fled persecution in Somalia, and if returned there he would fear for his life and would be targeted because he is a U.S. citizen. The record reflects that in August 2002, he was granted asylum status in the United States from Somalia. He contends that Somalia has no jobs or opportunities, just war and violence, and the government will be unable to protect them. He further states that they will have no family to help them. He declares that he worries that their children will have no health insurance or access to medical care and that their education will end since they do not speak Somali.

Country information submitted by the Applicant includes a United Nations report showing female genital mutilation is common in Somalia. The Applicant also submitted a 2014 U.S. Department of State travel warning on Somalia, which was updated in 2016. The U.S. Department of State warns U.S. citizens to avoid all travel to Somalia and that the United States does not have any diplomatic presence. The warning also states that there is no organized system of criminal justice in Somalia and that medical facilities are extremely limited. The Applicant also submitted a 2014 U.S. Department of State country report on Somalia and 2015 reports from Amnesty International and Human Rights Watch on Somalia. These reports indicate that the country remains unstable with ongoing conflict, violence, high numbers of displaced persons, and a deteriorating humanitarian situation. As established by the record, the Applicant and his family would be at significant risk of harm in Somalia.

The record further establishes that the Applicant's spouse has resided in the United States more than 15 years, and if he relocates to Somalia, he would be returning to the country from which he was granted asylum and where conditions would cause him fear for his own safety and that of his children and spouse. When the evidence in the record is considered together, it establishes that denial of the application would result in extreme hardship to the Applicant's spouse.

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 favorable factors in this case are the hardship to the Applicant's spouse and five children if the waiver application is denied, the letter of support from a community organization about the Applicant's contribution as a volunteer, her residence in the United States of 15 years, her marriage of 13 years, and the passage of more than 15 years since her fraud or willful misrepresentation with respect to her inadmissibility. The adverse factors in this case are the Applicant's fraud or misrepresentation and her placement in removal proceedings. 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. She has established that her spouse would suffer extreme hardship upon relocation to Somalia and that a favorable exercise of discretion is warranted. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of M-A-I-*, ID# 16598 (AAO July 28, 2016)