



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

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

MATTER OF A-M-

DATE: JUNE 7, 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 Mexico, seeks a waiver of inadmissibility for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) section 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 to lawful permanent resident (LPR) status 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 USCIS Field Office Director, Los Angeles, California, denied the Form I-601. The Director concluded that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, specifically for seeking to procure admission to the United States by presenting a border crossing card that belonged to another person. 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 her appeal, finding the evidence insufficient to establish extreme hardship upon separation.

The matter is now before us on motion. In the motion, the Applicant submits additional evidence.

We will grant the motion and sustain the appeal.

I. LAW

A motion to reopen must state new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The Applicant is seeking to adjust to LPR status and has been found inadmissible for fraud or misrepresentation, specifically for seeking to procure admission to the United States by presenting a border crossing card that belonged to another person.

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 U.S. 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 only issue presented on motion is whether the Applicant’s spouse would experience extreme hardship if the waiver is denied, whether he remained in the United States without her or accompanied her to Mexico. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.<sup>1</sup> The Applicant does not indicate whether her spouse intends to remain in the United States or relocate with her to Mexico should she depart or be removed from the United States. The Applicant claims her spouse would experience

---

<sup>1</sup> On January 13, 1996, the Applicant applied for admission into the United States and presented a border crossing card bearing another person’s name. The Applicant admitted her true name and that she had purchased the border crossing card to enter the United States.

(b)(6)

*Matter of A-M-*

extreme hardship under either scenario. The claimed hardship to the Applicant's spouse from separation consists primarily of emotional and financial hardship. The claimed hardship from relocation consists primarily of concern about the effect on her spouse's LPR status, loss of employment, poor job prospects in Mexico, fear of crime in Mexico and the effects on their U.S. citizen children, particularly their daughter with a congenital disability.

The evidence in the record, considered both individually and cumulatively, establishes that the Applicant's spouse would experience extreme hardship if he relocates with the Applicant to Mexico. The record contains sufficient evidence to establish much of the hardship claimed, and for the hardship demonstrated, the record shows that it rises above the common consequences of removal or refusal of admission to the level of extreme hardship.

A. Waiver

The Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives, in this case the Applicant's spouse. In support of her claim of hardship to her spouse, the Applicant submitted the following evidence with the Form I-601: a declaration from the Applicant's spouse, identity and relationship documents, a physician's letter describing their daughter's physical condition and disability, and an employment verification letter relating to the Applicant's spouse. On appeal, the Applicant submitted a brief, a declaration from her spouse, photographs, and medical records concerning their daughter. On motion, the Applicant submits a psychological evaluation of herself, tax records, letters from her children, letters attesting to her good moral character, and a declaration from her spouse.<sup>2</sup>

The Applicant claims that if her spouse relocates with her to Mexico, he will suffer emotional and financial hardship. Concerning his emotional hardship, the Applicant's spouse is worried about the adverse effect of taking their ■ year-old daughter, who has a congenitally deformed hand for which she has received physical therapy and regular monitoring since birth, to Mexico. Her doctors state that her prognosis is good and she may be a candidate for reconstructive surgery in the future. The evidence shows that the child has received specialized care for behavioral issues connected with her disability, in addition to physical therapy. The Applicant's spouse is concerned about removing their daughter out of a supportive environment to a new situation where she would lack access to familiar medical resources. The Applicant also states that she and her spouse have extended family in this country but not in Mexico.

Concerning other hardships her spouse may experience upon relocation, the Applicant and her spouse express concern that he will lose his LPR status if he relocates, given U.S. residency requirements. He has lived in the United States for 21 years, 10 years as a lawful permanent resident. They also express concern that by relocating, he would lose his current job and face poor

---

<sup>2</sup> Because the Applicant did not submit a certified translation of this statement, we cannot consider it in our review of her motion. 8 C.F.R. § 103.2(b)(3).

employment prospects in Mexico. In addition to the economic hardship causing him concern, he states that criminal activity in Mexico would cause his family to live in constant fear.

The totality of the circumstances, including jeopardy to the Applicant's spouse's LPR status, fear of unsafe conditions, the difficulty of separation from family in the United States, and fear of losing access to medical providers who have monitored and treated their daughter, reflect emotional hardship to the Applicant's spouse. In addition, losing his LPR status would cause the Applicant's spouse to lose his ability to lawfully work and also would create financial hardship. The Applicant has established that these concerns go beyond the usual or typical results of removal or inadmissibility and represent extreme hardship to a qualifying relative.

#### 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 factor is the Applicant's immigration violation. The favorable factors include the extreme hardship her LPR spouse would experience if the application were not approved, hardship to their U.S. citizen children, her lack of a criminal record, the 20 years that have lapsed since her immigration violation, her long-term residence in the United States, her family ties in the United States, her history of stable employment, and evidence attesting to her good moral character. The favorable factors outweigh the negative factors. Therefore, a favorable exercise of discretion is warranted.

#### IV. 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.

*Matter of A-M-*

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

Cite as *Matter of A-M-*, ID# 16738 (AAO June 7, 2016)