



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

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

MATTER OF S-B-A-

DATE: JUNE 10, 2016

APPEAL OF NEWARK, NEW JERSEY 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 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, Newark, New Jersey, denied the application. The Director concluded that the Applicant had not established that denial of admission would result in extreme hardship to her U.S. citizen spouse, the only qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant asserts that the Director erred in finding that she did not establish that her spouse would suffer extreme hardship if her application is denied.

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

I. LAW

The Applicant is seeking to adjust to LPR status and has been found inadmissible for 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

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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 appeal 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 Nigeria. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.¹ Were she to depart or be removed from the United States, the Applicant does not indicate whether her spouse intends to remain in the United States or relocate with her to Nigeria, but she claims he would experience extreme hardship under separation. The claimed hardship to the Applicant’s spouse from separation consists primarily of financial and emotional hardship. The Applicant does not address hardship due to relocation.

In support of these hardship claims, with her Form I-601 the Applicant submitted the following evidence: statements from the Applicant’s spouse, the Applicant’s spouse’s medical records, identity and relationship documents, letters from the Applicant’s employer, financial records, and their child’s school records. On appeal, the Applicant submits a statement.

The evidence in the record, considered both individually and cumulatively, establishes that the Applicant’s spouse would experience extreme hardship upon separation. The record contains sufficient evidence to establish much of the hardship claimed, and for the hardship demonstrated, the

¹ The record reflects that the Applicant arrived at the [REDACTED] New York, on [REDACTED] 2000, and presented a photo-substituted Nigerian passport that belonged to a U.S. lawful permanent resident to U.S. immigration inspectors.

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record shows that it rises above the common consequences of removal or refusal of admission to the level of extreme hardship.

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, for presenting a photo-substituted passport to gain entry into the United States.

B. 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.

The Applicant's spouse claims that if they are separated, he will suffer emotional and financial hardship. Addressing the hardships he would face without the Applicant, the Applicant's spouse asserts that the financial and emotional stress of raising their [redacted] year-old daughter alone would cause him extreme hardship. The Applicant's spouse also asserts that the Applicant is always by his side and that without her, his life is miserable. He further asserts that the Applicant supports him "in all things" and that she is his "back-bone."

Concerning his financial hardship, the Applicant's spouse states that he is unemployed and disabled due to a knee injury and follow-up surgery. The record contains evidence showing that the Applicant's spouse had knee surgery in 2013 and was prescribed six weeks of physical therapy. The Applicant submits a 2014 doctor's note, indicating that her spouse has been in his care since November 2010 and would be out of work until further notice due to a ligament tear in the left knee. As proof of his disability status, the Applicant submitted copies of Forms SSA-1099, Social Security Benefit Statements, issued by the Social Security Administration to the Applicant's spouse and daughter.

The Applicant's spouse asserts that he would suffer financial hardship if he is separated from the Applicant because, being unable to work owing to his injury, he needs her financial support. The Applicant provided copies of federal tax returns showing that the family had a combined income in 2014 of approximately \$38,500, with wages and unemployment compensation totaling \$22,350, in addition to \$16,320 in Social Security benefits. On appeal, the Applicant asserts that without her income, her spouse would be forced to live on his disability payments.

The evidence, considered both individually and cumulatively, shows that the Applicant's spouse would experience extreme hardship if they were to be separated. The Applicant's spouse's activities are still limited by his physical condition, and although he receives disability benefits, he relies on the Applicant for financial support. The Applicant also has shown that her spouse would experience emotional hardship without her, given the nature of their relationship and the potential effect of their

separation on their daughter. The evidence establishes that the combined effect of the Applicant's spouse's emotional and financial hardship, considered with his physical hardship, would be extreme.

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 adverse factor in the case is the Applicant's immigration violation. The favorable factors include hardship to the Applicant's spouse and daughter, her lengthy residence in this country, a history of stable employment, her payment of taxes, and the absence of a criminal record. The favorable factors outweigh the negative factors so 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. The Applicant has demonstrated that her spouse would experience extreme hardship.

ORDER: The appeal is sustained.

Cite as *Matter of S-B-A-*, ID# 15898 (AAO June 10, 2016)