



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

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

MATTER OF R-V-

DATE: JUNE 14, 2016

APPEAL OF DALLAS, TEXAS FIELD 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) § 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 Field Office Director, Dallas, Texas, 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 misrepresenting his name to an immigration officer after being arrested for attempting to illegally enter the United States. The Director then determined that the Applicant had not established that denial of admission would result in extreme hardship to his spouse, the only qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and states that the Director erred in finding that him inadmissible, as his misrepresentation was not material as required under section 212(a)(6)(C)(i) of the Act. The Applicant also states that the Director erred in not finding that his spouse's hardship would be extreme.

Upon *de novo* review, we will dismiss the appeal as the underling application is unnecessary.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a material misrepresentation, specifically for misrepresenting his name during an arrest by immigration officers.

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 issues presented on appeal are whether the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation and whether his spouse would experience extreme hardship if the waiver is denied. The Applicant does not contest his misrepresentation; however he claims that it was not material and therefore he is not inadmissible. The claimed hardship to the Applicant’s spouse from separation consists primarily of loss of income, medical hardship, and the emotional hardships of separation. The claimed hardship from relocation consists primarily of medical hardship and separation from family in the United States.

The record establishes that the Applicant’s misrepresentation was not material within the meaning of section 212(a)(6)(C) of the Act. The Applicant is therefore not inadmissible under section 212(a)(6)(C), and the waiver application is unnecessary. Because the waiver application is unnecessary, the issue of whether the Applicant established extreme hardship to a qualifying relative pursuant to section 212(i) is moot and will not be addressed.

(b)(6)

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#### A. Inadmissibility

As stated above, the Applicant has been found to be inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation, specifically for misrepresenting his name after apprehension by U.S. immigration officers. While admitting that he made a willful misrepresentation, the Applicant claims that the misrepresentation was not material and therefore he is not inadmissible.

The record establishes that on [REDACTED] 1995, U.S. immigration officers apprehended the Applicant after he entered the United States without inspection at, or near, [REDACTED] Texas. At the time of his arrest, the Applicant misrepresented his name; however, he provided his correct date of birth and country of citizenship. In his Form I-601, the Applicant asserts that he misrepresented his name because he feared that immigration officials could use his true identity to locate and deport his family members who were illegally residing in the United States.

In making a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act, there must be evidence in the record showing that a reasonable person would find that an applicant willfully misrepresented a material fact in an attempt to obtain a visa, other documentation, admission into the United States, or any other immigration benefit. 8 USCIS Policy Manual J.3(A)(1), <https://www.uscis.gov/policymanual>.

With respect to misrepresenting one's identity, the USCIS Policy Manual states:

A misrepresentation concerning a person's identity almost always shuts off a line of inquiry because, at the outset, it prevents the adjudicating from scrutinizing a person's eligibility for a benefit. However, if the line of inquiry that is shut off would not have resulted in the denial of the benefit, then the misrepresentation is harmless. The applicant bears the burden of proof to demonstrate that the relevant line of inquiry that was shut off by the misrepresentation of his or her identity was irrelevant to the original eligibility determination

*Id.* at J.3(E)(4).

Here, the Applicant misrepresented his name not to gain entry to the United States, but in an attempt to protect his family from any possible immigration consequence of his arrest. At the time of his misrepresentation, the Applicant provided his correct country of citizenship and did not claim to have any legal status in the United States. The Applicant's misrepresentation did not provide him with any immigration benefit or enable him to gain admission to United States. Because the Applicant was inadmissible and subject to removal to Mexico based on his misrepresented name and based on the true facts, the concealment did not cut off a relevant line of inquiry which might have led to a different finding.

The record does not support a finding that the Applicant's misrepresentation was made in order to procure a visa, other documentation, or admission into the United States, or other benefit provided

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under the Act. Therefore we find that the Applicant is not inadmissible for misrepresentation under section 212(a)(6)(C)(i) of the Act. The waiver application is thus unnecessary and the issue of whether the Applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed.

### 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. Here the Applicant is not inadmissible and therefore not required to file a waiver application. Because the waiver application is unnecessary, the appeal is dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of R-V-*, ID# 18065 (AAO June 14, 2016)