



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

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

MATTER OF E-T-M-L-

DATE: JUNE 16, 2016

APPEAL OF LOS ANGELES, CALIFORNIA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of El Salvador, 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 status to that of a lawful permanent resident 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 application. The Director concluded that the Applicant had not established that denial of admission would result in extreme hardship to his U.S. citizen spouse, the only qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant submits a brief and claims that the Director erred in not finding that his spouse's hardship would be extreme.

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

I. LAW

The Applicant is seeking to adjust status to that of lawful permanent resident and has been found inadmissible for fraud or misrepresentation, specifically, misrepresenting his date of entry on multiple U.S. immigration applications and obtaining a travel document after those applications were approved.

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 appeal is whether the Applicant’s spouse would experience extreme hardship if the waiver is denied, whether she remained in the United States without him or accompanied him to El Salvador. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.¹ The Applicant does not indicate whether his spouse intends to remain in the United States or relocate with him to El Salvador should he depart or be removed from the United States. The Applicant claims his spouse would experience extreme hardship under either scenario. The claimed hardship to the Applicant’s spouse from separation consists primarily of physical hardship, loss of income and the emotional hardships of separation. The claimed hardship from relocation consists primarily of the loss of her employment and medical care, the inability to obtain employment, emotional hardship, a lower standard of living, physical hardship from inadequate medical care, and exposure to high rates of violent crime in El Salvador.

The evidence, considered both individually and cumulatively, establishes that the Applicant’s spouse would experience extreme hardship upon relocation to El Salvador.

¹ In a sworn statement, the Applicant stated he first entered the United States on February 17, 2001, which contradicts his claimed first date of entry on his applications for temporary protected status (TPS). The Applicant had misrepresented his date of entry to qualify for, and receive, TPS and a travel document, which he used to re-enter the United States in 2013.

A. Hardship

In this case, the Applicant must demonstrate that refusal of admission would result in extreme hardship to his spouse. In support of his claim of hardship to his spouse, the Applicant submitted the following evidence with the Form I-601: statements from his spouse and himself, medical documentation, financial documents, identity and relationship documents, and photographs. On appeal, the Applicant submits a brief.

The Applicant claims that if his spouse relocates with him to El Salvador, she will suffer emotional, medical, and financial hardship. Concerning emotional hardship, the Applicant states that his spouse was born in this country and has never lived outside of the United States; she is unfamiliar with life in El Salvador. The Applicant's spouse states she has never visited El Salvador and has no friends or family there. The Applicant's spouse has a brother in the United States, and she is grieving the loss of their parents, who recently died.

The Applicant states that his spouse will experience medical hardship in El Salvador because she has arthritis of the spine, for which she receives weekly chiropractic treatments. The Applicant's spouse asserts that she would be unable to find adequate medical care in El Salvador. The Applicant's spouse relies on health insurance her employer provides. Evidence in the record corroborates the Applicant's claims of his spouse's medical conditions and insurance.

With respect to his spouse's financial hardship upon relocation, the Applicant submits evidence of his spouse's employment and benefits. The record shows that the Applicant's spouse has been employed for 20 years. The Applicant states that the designation of El Salvador for TPS proves the economy there is poor, and this would affect their ability to find employment in El Salvador.

The Applicant and his spouse also express concern about hardship related to country conditions, particularly regarding violent crime, should they relocate to El Salvador. The Applicant's concerns about risks to their personal safety are corroborated by the U.S. Department of State's warning that crime and violence levels in El Salvador remain critically high. *See Department of State Travel Warning – El Salvador – updated January 15, 2016.*

Taking into account the evidence of the Applicant's spouse's emotional state and separation from her brother, her having lived in the United States all of her life, her medical condition, and country conditions as they relate to the economy and crime in El Salvador, we conclude that the record establishes that the Applicant's spouse would suffer more than the usual effects of relocation, were she to join him in El Salvador. The evidence, considered in the aggregate, establishes that the Applicant's spouse would experience extreme hardship if the application is denied.

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 case include the Applicant's misrepresentation of his date of entry to obtain TPS status and a travel document. The favorable factors include extreme hardship to the Applicant's spouse and the Applicant's residence of 15 years in this country. Additional favorable factors include the Applicant's history of stable employment, payment of his taxes, and good moral character as described in letters from his employer, co-workers, and friends. The favorable factors outweigh the negative factors so that 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 the emotional, medical, and financial impact on his spouse, if his application were denied, would amount to extreme hardship.

ORDER: The appeal is sustained.

Cite as *Matter of E-T-M-L-*, ID# 16729 (AAO June 16, 2016)