



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

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

MATTER OF H-J-

DATE: JUNE 16, 2016

APPEAL OF SACRAMENTO, CALIFORNIA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of China, 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 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, Sacramento, California, denied the application. The Director determined that the record did not establish that the Applicant's U.S. citizen spouse or parents would suffer extreme hardship.

The matter is now before us on appeal. In the appeal, the Applicant submits an amended brief and additional evidence, and he claims that the Director erred by not considering his evidence of hardship in the aggregate. He also claims the Director violated his due process rights.

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

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a fraud or misrepresentation, specifically, for making contradictory statements when he was interviewed in connection with his Form I-751, Petition to Remove the Conditions on Residence.

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 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 issue presented on appeal is whether the Applicant’s qualifying relatives, his U.S. citizen spouse or parents, would experience extreme hardship if the waiver is denied, whether they remained in the United States without him or accompanied him to China. 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 his spouse or parents intend to remain in the United States or relocate with him to China should he be deported or be removed from the United States. The Applicant claims that his spouse and parents would experience extreme hardship under either scenario. The claimed hardship to the Applicant’s spouse and parents from separation consists primarily of emotional and financial hardship. The claimed hardship from relocation consists primarily of emotional, financial, and medical hardship.

The evidence in the record, considered both individually and cumulatively, establishes that the Applicant’s spouse would experience extreme hardship. Because the Applicant has established

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<sup>1</sup> The record shows that the Applicant misrepresented facts concerning his relationship and activities with his former spouse, who had filed an immigrant petition on his behalf.

extreme hardship to his spouse, it is not necessary to address the evidence of hardship to his other qualifying relatives, his parents.

The Applicant also asserts that the Director denied him his due process rights. Constitutional issues are not within our appellate jurisdiction; therefore we will not address this assertion in our decision.

#### A. Hardship

In this case, the Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case the Applicant's spouse or parents. In support of his claim of hardship to his spouse and parents, the Applicant submitted the following evidence with his Form I-601: a psychological evaluation of his spouse; photographs; his mother's medical records; articles about the availability of assisted reproductive technology in China; reports and articles about China's economy; and declarations from the Applicant, his spouse and parents. On appeal, the Applicant submits additional statements from himself, his spouse and parents; reports about wages in China; and information about U.S. federal poverty guidelines.

The Applicant claims that if his spouse relocates with him to China, she will suffer emotional, medical, and financial hardship. As to emotional hardship, the Applicant states that he and his spouse want to have children together but that they require infertility treatment. He asserts that this treatment in China is less available than in the United States and that it is also expensive. The Applicant's spouse states that she will suffer emotionally if she and the Applicant are unable to bear children. The Applicant submits medical evidence to corroborate his claims of their need for treatment and reports about assisted reproductive technology in China. The reports state Chinese couples seeking assisted reproductive technology have limited access to such treatment and that the demand in China exceeds its availability.

In addition to emotional hardship related to their ability to have children, a psychological evaluation indicates that the Applicant's spouse claims to have suffered severe depression with suicidal intention in the past and is currently experiencing high levels of anxiety over the Applicant's immigration status. The evaluation also indicates that the Applicant's spouse is anxious about their financial security and prospects for having children. The psychologist states that the Applicant's spouse's severe depression with suicidal intent may resurface if she experiences significant stress. He also states that in addition to the shame the Applicant's spouse would feel because her marriage to the Applicant did not produce offspring, the Applicant's deportation would result in "great familial disdain and shame from . . . her family."

Regarding medical hardship his spouse would experience if she were to relocate to China, the Applicant states that his spouse's access to healthcare would be limited because she now is a U.S. citizen. The Applicant does not support this assertion with evidence showing that access to healthcare in China is limited for non-citizens or that his spouse no longer holds Chinese citizenship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998).

Regarding the financial hardship his spouse would experience in China, the Applicant asserts that their employment prospects in China are limited because of their limited education. To corroborate his claim, he submits reports about economic conditions in China, showing that the minimum wage is not a living wage, particularly for individuals in the construction industry, which would be the best option for the Applicant, and according to one report, these workers often are not paid. In addition, the reports discuss wealth inequality as a social issue and negative employment conditions. The evidence shows that the Applicant's spouse, who worked as a hairdresser in the United States, would suffer financial hardship if she relocates to China, given her probable inability to find suitable employment and the Applicant's foreseeable difficulties in financially supporting their family.

Considering hardship to the Applicant's spouse, both individually and cumulatively, the record contains sufficient evidence to establish the hardships claimed would rise to the level of extreme hardship. The record reflects that the Applicant's spouse would suffer significant emotional hardship given her past psychological conditions, her inability to have a family with the Applicant, and her depression, shame, and anxiety as they relate to his immigration issues. In addition, the Applicant provides sufficient evidence showing that the Applicant's spouse would depend on him to financially support their family in China, and he would have difficulties doing so given current economic and social conditions there. Based on the totality of the evidence, we find that the Applicant's spouse would suffer extreme hardship if the waiver application was denied.

#### B. Discretion

We will 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 grounds 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 unfavorable factor in this case is the Applicant's misrepresentation. The favorable factors include the extreme hardship his spouse would suffer if the waiver application is denied, hardship to his parents, his family ties, his 16-year residence in this country, the absence of a criminal record, and the length of time that has passed since his misrepresentation. Upon review, the positive factors in this case outweigh the negative 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. Accordingly, we sustain the appeal.

**ORDER:** The appeal is sustained.

Cite as *Matter of H-J-*, ID# 16875 (AAO June 16, 2016)