



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

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

MATTER OF C-E-N-

DATE: JUNE 20, 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 Nigeria, 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 application. The Director concluded that the Applicant was inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or misrepresentation, specifically for misrepresenting a material fact. The Director then determined that the Applicant had not established that denial of his application 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 a brief. He asserts that he did not make a misrepresentation and the Director erred in not finding extreme hardship.

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 a 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 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 first issue we must address is whether the Applicant is inadmissible. The Applicant asserts that he did not willfully misrepresent a material fact to gain an immigration benefit. His assertion, however, is contrary to evidence in the record showing that he admitted to a U.S. immigration officer that he misrepresented a fact concerning his first marriage for an immigration benefit. The next issue to address is whether he has established that a qualifying relative will suffer extreme hardship if his Form I-601 is denied. The Applicant indicates that if his application is denied, his spouse would experience extreme hardship whether she remains in the United States or relocates with him. The claimed hardship to the Applicant’s spouse from separation consists of emotional and financial hardship. The claimed hardship from relocation consists primarily of emotional hardship related to his spouse’s separation from family in the United States and the risk of exposure to Ebola and to terrorism.

In support of these hardship claims, the Applicant submitted the following evidence with his Form I-601: declarations from his spouse and himself; medical records for the Applicant’s spouse, her grandmother, and daughter; school records for the Applicant; and financial documentation, including evidence that the Applicant and his spouse own their business. On appeal, the Applicant

submits psychosocial evaluations of his spouse and himself, family photographs, and a brief. The Applicant provides sufficient evidence to establish that his spouse would experience extreme hardship if his application were not approved

A. Inadmissibility

The Applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, specifically for submitting an altered document and subsequently denying he did so, with an application to adjust to lawful permanent resident status.

The record reflects that the Applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, concurrently with a Form I-130, Petition for Alien Relative, that his first spouse filed on his behalf. He submitted an altered lease with the Form I-485 to show he lived with his spouse. The Applicant divorced his first spouse after the application was denied and married his second spouse. The Applicant's second spouse filed a Form I-130 on the Applicant's behalf, and he concurrently filed another Form I-485. On his second Form I-485, the Applicant indicated he had not sought to procure an immigration benefit by fraud or willful misrepresentation. In 2014 the Applicant admitted to a U.S. immigration officer that he had submitted an altered lease with his first Form I-485.

On appeal, the Applicant asserts that a third party provided the altered lease to his ex-spouse, who submitted it without his knowledge or approval. This statement, however, is inconsistent with his 2014 statement to an immigration officer. He has not provided sufficient evidence to show that a third party submitted the altered document and that he was unaware of the misrepresentation. Because USCIS applications are signed under penalty of perjury, an applicant, by signing and submitting the application or materials submitted with the application is attesting that his or her claims are truthful. 8 USCIS Policy Manual J.3(D)(1), <https://www.uscis.gov/policymanual>.

The record shows that the Applicant acknowledged submitting an altered lease agreement with his first Form I-485, to prove he lived with his former spouse in a marital relationship, and that on his second Form I-485, he did not acknowledge having misrepresenting material facts for an immigration benefit. He therefore is inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure adjustment to lawful permanent resident status through willfully misrepresenting a material fact.

B. Hardship

In this case, the Applicant must demonstrate that denial of the application would result in extreme hardship to his spouse. The Applicant asserts that his spouse would experience emotional and financial hardship if she were to remain in the United States without him. The Applicant's spouse expresses concern for the Applicant's safety should he return to Nigeria due to the high crime rate there. She states that she and the Applicant have established a business and that if the Applicant leaves, she would have to close it. She also states, and evidence in the record establishes, that their efforts to develop their business have been thwarted because of the Applicant's unresolved

immigration status. In addition, she states that she also has relied upon him for emotional and financial support. She expresses concern about the effect of separation upon her six year-old daughter and herself, asserting that they are both very close to the Applicant and that separation would be very difficult for them. The Applicant's spouse states that the Applicant is the only father her daughter has known. She states that when she attends classes, the Applicant takes care of her daughter.

In support of these hardship claims, the Applicant submits a psychological assessment, prepared by a marriage and family therapist (MFT), indicating that the Applicant's spouse has reported suicidal thoughts in the past and present and that the Applicant's current immigration situation has caused his spouse additional stress that has exacerbated her emotional instability. The Applicant reported to the therapist that his spouse attempted to take several pills as a suicide attempt in 2015. The MFT stated that permanent separation could be emotionally harmful to the Applicant's spouse.

The record contains financial documentation indicating that the Applicant earned \$10,883 in 2011 and his spouse earned \$935 that year. According to 2013 pay statements, the Applicant earns \$14 an hour and works between 10 to 40 hours a week. The record establishes that the Applicant's spouse does not earn a sufficient income to provide for herself and her daughter, without the Applicant's financial contributions.

The documentation in the record, when considered in its totality, reflects that the Applicant has established that his U.S. citizen spouse would suffer extreme hardship were the Applicant unable to reside in the United States. In reaching this conclusion, we note the severity of the emotional and financial circumstances his spouse would face as a result of separation from the Applicant, including the emotional impact of separation on his step-daughter, which would affect the Applicant's qualifying relative, his spouse. Accordingly, we find that the evidence supports finding that the Applicant's spouse's 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 unfavorable factors in this case are the Applicant's attempt to procure admission through willful misrepresentation of a material fact and his period of unauthorized presence in the United States. The favorable factors include the extreme hardship that the Applicant's U.S. citizen spouse and step-child would face if the Applicant were to relocate to Nigeria without them and the lack of a criminal record. In addition, the record indicates that the Applicant has been in this country for 10 years, he has significant family ties, and he is currently employed. The record reflects that he has supported his family and is an active member of his church. His good character also is described in letters of support for the Applicant. Upon review, the positive facts 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. He provided sufficient evidence showing, cumulatively, that the emotional and financial hardship his spouse would experience if his application were denied would be extreme.

ORDER: The appeal is sustained.

Cite as *Matter of C-E-N-*, ID# 14329 (AAO June 20, 2016)