



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

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

MATTER OF S-P-

DATE: MAR. 30, 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 Laos, 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 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 procuring admission to the United States by falsely representing herself as a LPR. The Director then determined that the Applicant had not established that denial of admission would result in extreme hardship to her spouse, the only qualifying relative.

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

Upon *de novo* review, we will dismiss 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 states:

Any alien 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 this Act is inadmissible.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides, in pertinent part:

(1) The [Secretary of Homeland Security] may, in the discretion of the [Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the

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case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the [Secretary of Homeland Security] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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 he remained in the United States without her or accompanied her to Laos.¹ The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.² Were she to depart or be removed from

¹ The Applicant included only her spouse as a qualifying relative on her Form I-601. The Applicant does not claim that her mother and father, who reside in the United States, are qualifying relatives for purposes of section 212(i) of the Act, and there is no evidence in the record that they are U.S. citizens or LPRs. The Applicant indicates that she was admitted to the United States with her parents in 1989, but her parents “failed to update our status.” The record shows that the Applicant’s father applied for asylum, but the application was denied on May 6, 1994. The Applicant states that she cares for her grandmother, who is a U.S. citizen, but the Applicant’s grandmother also is not a qualifying relative under section 212(i).

² The record contains a sworn statement taken from the Applicant in which she states that she got lost trying to pick up her father in [redacted] and ended up across the border in Mexico. She then obtained admission to the United States, telling the inspecting officer “that I didn’t have my green card and that I just had my [California driver’s license] on me.”

the United States, the Applicant does not indicate whether her spouse intends to remain in the United States or relocate with her to Laos, but she claims he would experience extreme hardship under either scenario. The claimed hardship to the Applicant's spouse from separation consists primarily of loss of income and the emotional hardships of separation. The claimed hardship from relocation consists primarily of separation from family in the United States, the inability to obtain employment or pursue a chosen profession, a lower standard of living, and physical hardship from inadequate medical care.

In support of these hardship claims, the Applicant submitted the following evidence. With the Form I-601 the Applicant submitted statements from herself, her spouse, and her uncle. She also submitted copies of photographs, medical records, and reports concerning conditions in Laos. The record also contains copies of tax and financial records, school records, marriage and birth certificates, and immigration documents. On appeal, the Applicant submitted additional statements from herself and her spouse, as well as reports concerning the cost of living, education and healthcare in Laos.

The evidence in the record, considered both individually and cumulatively, does not establish that the Applicant's spouse would experience extreme hardship. The record does not contain sufficient evidence to establish much of the hardship claimed, and for the hardship demonstrated, the record does not show that it rises above the common consequences of removal or refusal of admission to the level of extreme hardship. Because there is no showing of extreme hardship, we will not address whether the Applicant merits a waiver as a matter of discretion. Finally, though not addressed by the Director, the record shows that the Applicant is also inadmissible for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

A. 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 claims that if her spouse remains in the United States without her, he will suffer emotional and financial hardship. As to the financial hardship, the Applicant states that she is unemployed but also that she helps support her husband, who is also unemployed, through odd jobs such as babysitting and catering, and she expects to provide greater financial support in the future. The Applicant states that she will be able to provide greater financial support through work as a pharmacy technician once authorized to work. While the Applicant claims that she completed her program of study to be a pharmacy technician, the record contains only an incomplete college transcript indicating the Applicant's major as pharmacy technician. The record does not contain further evidence establishing that she completed her course of study, nor does it contain evidence of what income she could expect to obtain in her field. Although the Applicant indicates that she has been employed in the past, the record contains no specific details concerning her income, either past or present, or her financial contribution to her and her spouse's expenses. There is no documentation

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of current expenses. The financial documentation in the record reflects the Applicant's spouse's finances from 2008 to 2012.

The Applicant and her spouse claim that he is unemployed and unable to work as a result of an eye infection or condition. A Form W-2 Wage and Tax Statement for 2012 shows that the Applicant's spouse was employed and earned \$28,746 that year from [REDACTED]. The Applicant states that her spouse, who claims to be a trained and certified composite technician in the aerospace industry, was laid off from that position due to his eye condition. The medical records submitted are largely illegible but, from what we can discern, do not appear to relate to the Applicant's spouse. Apart from the copy of a photograph apparently depicting inflammation near the Applicant's left eye, the record appears to contain no further documentation concerning his medical condition, hospital or doctor visits, or how his condition resulted in the loss of his employment and currently affects his ability to find and retain employment.

As to the emotional hardship, the Applicant and her spouse married in 2011, and they indicate that they have been together for over 10 years. Photographs in the record show the Applicant and her spouse together with family and friends over a period of time, and the Applicant's uncle attests to the length of their relationship. The Applicant states that they have not been separated since they married, and both the Applicant and the Applicant's spouse indicate that they do not know how they would deal emotionally with being separated from one another. Although not stated directly, it appears from the record that the Applicant and her spouse reside with his parents. The applicant states they are unable to live on their own and have children until the Applicant obtains lawful immigration status in the United States.

Therefore, with respect to separation, the record either contains insufficient evidence to establish the hardships claimed, or, for the hardships demonstrated, does not show that they rise to the level of extreme hardship when considered both individually and cumulatively. As stated above, the evidence of financial hardship consists mostly of statements from the Applicant and her spouse, without additional details or supporting documentation concerning income, expenses, and earning potential. At most the record reflects that the Applicant currently provides minimal financial support to her spouse, and there is insufficient evidence showing her future earning potential if she obtains LPR status. Furthermore, the record contains evidence that the Applicant's spouse has been employed in the past, and it lacks sufficient evidence corroborating the claims that he lost his job and cannot find or retain employment due to a medical condition. Therefore, we determine that the record does not support a finding of financial hardship if the Applicant's spouse remains in the United States.

As to the emotional hardship of separation, we acknowledge the statements from the Applicant and her spouse, confirmed by the Applicant's uncle, that they have a close relationship and that separation would result in emotional hardship. However, from these statements alone, we are unable to distinguish the emotional or psychological hardship in this case from hardship that is the common consequence of removal or refusal of admission. Furthermore, though we may consider prospective emotional hardships such as those stemming from the inability to purchase a home and have a family together, the record does not reflect that the Applicant and her spouse have the financial means to

buy or rent a home, and they have not demonstrated what income they can expect in the near future. They have also not provided details about their plans to have children in the immediate future. Consequently, these hardships are not sufficiently foreseeable to be given significant weight in our analysis, though we have considered them in our evaluation of the aggregate hardship. *See Matter of Shaughnessy, supra.* Taken together, the evidence does not show that the emotional hardship alone would constitute extreme hardship.

Thus, while the record reflects that the Applicant's spouse would experience hardship in the Applicant's absence, it does not show that the hardship demonstrated, considered individually and cumulatively, rises to the level of extreme hardship.

Concerning relocation to Laos, the Applicant claims that her spouse would suffer emotional, financial, physical, and professional hardships. As to emotional hardship, the Applicant and her spouse claim that they are emotionally close to their families, who live in the United States, and that being separated from them would result in emotional hardship. The record shows that, while his parents are natives of Laos, the Applicant's spouse was born in the United States. The Applicant and her spouse state that he helps his parents with various household tasks, but they do not provide further details as to extent of the assistance required. The record does not indicate that his parents are in poor health or that other family members are unable or unwilling to provide any necessary assistance. The Applicant states, and her uncle confirms, that she is close to and provides care for her elderly grandmother, who lives with the Applicant's uncle but has several medical conditions that require daily monitoring. She does not address whether there are other family members, other than her uncle, who would help in her absence. The Applicant and her spouse also have not addressed how the Applicant's separation from and inability to care for her grandmother would adversely affect him.

The Applicant also claims that her spouse, upon relocation to Laos, would suffer financial hardship due to the inability to obtain employment, particularly in the Applicant's spouse's chosen profession. The Applicant's spouse states that he wishes to work in the aerospace industry, the field in which his father worked and for which he is trained, but that such work is not available in Laos. The record contains no documentation to support the claim that there is no employment available in Laos within the aerospace industry. The Applicant and her spouse state further that they will not be able to obtain any employment in Laos because they are unable to read or write the Lao alphabet. They did not, however, further substantiate in the record that they are illiterate in Lao or that this would render them unemployable. The Applicant and her spouse do not assert additional hardship from cultural adjustment.

The Applicant asserts that they would experience hardship based on what they characterize as a lower standard of living in Laos, including the lack of adequate medical care and education opportunities for any children they may have. Based on the evidence in the record, we acknowledge that medical facilities and services in the Laos are limited and typically do not meet standards common in the United States. However, as previously stated, though there is some evidence in the record that the Applicant has an eye condition, the Applicant has not provided specific information about the nature and seriousness of that condition. There is thus insufficient information in the

record to ascertain the impact of a generalized lower standard of medical care in Laos on that condition. The Applicant and her spouse do not indicate that they suffer from any other medical problems. As for educational opportunities for their children, as discussed above, the Applicant and her spouse have not provided details about their plans to have a family. Consequently, we cannot give significant weight to this claim, though we have considered it in our evaluation of the aggregate hardship. *See Matter of Shaughnessy, supra.* We note further that the reports submitted indicate that free public education, from primary through secondary school, is available in Laos, as is university education. Although the Applicant has submitted information concerning the cost of living in Laos, because the record does not support that she and her spouse will be unable to obtain employment there, we cannot ascertain what hardships, if any, they may experience as a consequence of a reduced standard of living. We also note that hardships such as the inability to maintain one's standard of living or to pursue a chosen profession, as well as separation from family, are generally considered common consequences of removal or refusal of admission. *See Matter of Pilch, supra.* Nevertheless, we have considered these claims in our evaluation of the aggregate hardship.

Thus, with regard to the claimed hardship upon relocation, the record either contains insufficient evidence to establish the hardships claimed, or, for the hardships demonstrated, does not show that they rise to the level of extreme hardship when considered both individually and cumulatively. The record contains insufficient evidence to show that the Applicant and her spouse would be unable to obtain employment in Laos, and what financial or other hardships, if any, they would suffer as a consequence. We acknowledge the evidence that conditions in Laos may not equal those to which the Applicant's spouse is accustomed in the United States, and that the Applicant's spouse would experience emotional hardship from being separated from his family, but when considered individually and cumulatively, the demonstrated hardship does not rise above the common consequences of removal or refusal of admission to the level of extreme hardship.

Therefore, the record does not establish that refusal of admission would result in extreme hardship to the Applicant's spouse either if he remained in the United States or relocated to Laos.

B. Discretion

As the Applicant has not demonstrated extreme hardship to a qualifying relative or qualifying relatives, we need not consider whether the Applicant warrants a waiver in the exercise of discretion.

III. ADDITIONAL INADMISSIBILITY

While not addressed by the Director, the record also shows that the Applicant is inadmissible for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act. The Applicant was initially admitted to the United States on December 1, 1989 as a B-2 visitor with authorization to remain in the United States until June 1, 1990. The Applicant was a derivative beneficiary on her father's Form I-589, Request for Asylum in the United States, which was denied on May 6, 1994. The record does not indicate that the Applicant was placed into deportation proceedings even though a Form I-221, Order to Show Cause and Notice of Hearing, was issued in her case. The Form I-221 indicates only that the hearing would be calendared at a later date. The Applicant remained in the United States from

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her initial admission until her departure and readmission through fraud/material misrepresentation on February 22, 2013. The Applicant's Form G-325A indicates that she worked in the United States as early as January 2006, but there is no evidence in the record that she was ever authorized to work. Either at the time the Applicant turned 18 years old on [REDACTED], or when she worked without authorization after that time, she began to accrue unlawful presence in the United States. Therefore, at the time of her departure from the United States on February 22, 2013, the Applicant had accrued one year or more of unlawful presence. As a result, her departure triggered her inadmissibility under section 212(a)(9)(B)(i)(II), a ground of inadmissibility that is waivable under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §1182(a)(9)(B)(v), under the same standard as the waiver the Applicant has sought under section 212(i) of the Act, by showing extreme hardship to a U.S. citizen or LPR spouse or parent.

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 not met that burden. The Applicant has not demonstrated that her spouse would experience extreme hardship. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of S-P-*, ID# 16736 (AAO Mar. 30, 2016)