



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

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

MATTER OF N-S-

DATE: MAY 3, 2016

APPEAL OF NEW YORK, NEW YORK FIELD OFFICE DECISION

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

The Applicant, a native and citizen of the Philippines, 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 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, New York, New York, denied the application. The Director concluded that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. The Director concluded that the Applicant had not established extreme hardship to her spouse. The Director further stated that because the Applicant did not specify a ground of inadmissibility for USCIS to consider, no waiver could be granted.

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 status to lawful permanent resident and has been found inadmissible for a fraud or misrepresentation, specifically for procuring a nonimmigrant visa by 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 Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.<sup>1</sup> The claimed hardships to the

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<sup>1</sup> The record contains a sworn statement from the Applicant in which she states that she began working for her employer in 2007 and had obtained a temporary business visitor visa to enter the United States as her employer's personal employee. USCIS revoked her nonimmigrant visa after an investigation revealed that the Applicant never had a relationship with her alleged employer and had procured the B-1 nonimmigrant visa through fraud or willful misrepresentation. The Applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation.

Applicant's spouse from separation are the psychological and emotional hardships of separation. The claimed hardships from relocation are psychological hardship, a lower living standard, economic detriment, and the emotional hardships of separation from family.

In support of these hardship claims, the Applicant submitted the following evidence. With the Form I-601, the Applicant submitted an affidavit from her spouse and a psychological evaluation of her spouse. On appeal, she submits a supplemental psychological evaluation of her spouse.

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 that the hardships upon separation or relocation would be extreme. Since the Applicant has not demonstrated extreme hardship, we will not address whether she merits a waiver as a matter of discretion.

#### A. Waiver

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case her spouse.

The Applicant's spouse asserts that he will suffer emotional hardship if he remains in the United States without the Applicant. He maintains that he has a close relationship with her and depends on her emotionally. He states that his previous marriage and divorce were hard on him, and he sank to a low point. The Applicant's spouse states that he worries about being separated from the Applicant and has been stressed since her adjustment of status interview. The Applicant submitted a psychological evaluation of her spouse from a psychologist which stated that her spouse struggled with depression and alcohol abuse after his former spouse forced him to leave their home in 2010 but with his family and friends help he stopped using alcohol and emerged from his depression. The psychologist stated that his parents and siblings were essential to his emotional stability. The psychologist stated that the Applicant and her spouse have a close relationship and want to start a family but that her spouse worries about the possibility of her deportation. The Applicant submitted a supplemental psychological evaluation from the psychologist stating that her spouse is dependent on her and needs stability. We acknowledge that the Applicant's spouse will experience emotional hardship if he were to remain in the United States while his spouse relocates abroad, but the record does not establish the severity of the hardship and the effects on his daily life. The record shows that the Applicant's spouse has supportive friends and family in the United States. The record also shows that despite the emotional hardships of his separation and divorce, he was able to be gainfully employed, as the record contains a letter from his employer stating that since 2007 he has been employed as a full-time doorman. They have not provided details about their plans to have children in the immediate future. The psychologist stated that the Applicant's spouse would experience extreme hardship if separated from the Applicant. However, her statement is not supported by the record.

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.

With regard to hardship upon relocation, the Applicant's spouse asserts that he could not relocate to the Philippines because he was born and raised in the United States and his entire family resides here. He maintains that he is set in his ways and the idea of moving to another country makes him anxious. The psychologist stated that if the Applicant's spouse relocated abroad, he would lose his pension and benefits and his emotional support system in the United States. She further stated that he would live in the Applicant's rural hometown in the Philippines and would have no modern amenities. The psychologist also stated that the Applicant's spouse does not speak any of the languages native to the Philippines and would be unemployable. The Applicant has not submitted documentation that would establish that she and her spouse would be unable to obtain gainful employment or adequate housing in the Philippines. She has submitted no evidence demonstrating her husband's pension and benefits. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Although we acknowledge that the Applicant's spouse will experience emotional hardship if he relocates abroad, the record does not establish the severity of the hardship and the effects on his daily life.

Thus, with regard to the claimed hardship upon relocation, the record either contains no 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 lacks evidence to show that the Applicant and her spouse would be unemployable or unable to obtain adequate housing in the Philippines. The record contains no evidence of the Applicant's husband's pension and benefits. We acknowledge 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.

#### B. Discretion

Since 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. 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. Accordingly, we dismiss the appeal.

*Matter of N-S-*

**ORDER:** The appeal is dismissed.

Cite as *Matter of N-S-*, ID# 16289 (AAO May 3, 2016)