



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

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

MATTER OF J-S-C-

DATE: MAY 10, 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 the Philippines, seeks a waiver of inadmissibility for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) § 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, Los Angeles, California, denied the application. The Director found the Applicant inadmissible pursuant to section 212(a)(6)(C)(i) for having sought a benefit through fraud or misrepresentation and concluded that the Applicant had not established extreme hardship to a qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director's decision was an abuse of discretion, that she is innocent of the fraudulent scheme under which a previous application was filed on her behalf, and that the record establishes her spouse will experience extreme hardship due to her inadmissibility. The Applicant submits a news release from the U.S. Attorney's Office in the Southern District of California and copies of prior USCIS correspondence on appeal.

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 fraud or misrepresentation, specifically having filed a Form I-485, Application to Register Permanent Residence or Adjust Status, based on a marriage that did not exist. 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 issues on appeal are whether or not the Applicant is admissible and, if not, whether the Applicant has established extreme hardship to a qualifying relative. The Director found the Applicant inadmissible for misrepresentation based on the fact that she had submitted a previous application for adjustment based on a marriage which did not exist. The Applicant claims that she was unaware of the nature of the false information submitted with that application and that the preparer was the one responsible for its fraudulent contents at the time. The Applicant has submitted a news article discussing the conviction of an immigration forms preparer.

Alternatively, the Applicant claims that her spouse would experience extreme hardship due to her inadmissibility. The Applicant explains on appeal that her spouse suffers from numerous medical conditions, including major depressive disorder, type two diabetes requiring daily insulin injections, severe tremors in her hands, and issues arising from a recent tibular fracture. She explains that, due to her conditions, her spouse cannot work and needs the Applicant to provide their family income. The Applicant further states that she ferries her spouse to and from medical appointments, gives her insulin injections and organizes her medication. The Applicant claims that her spouse would experience extreme emotional/psychological hardship due to separation, and that she would experience physical and medical hardships upon relocation.

We find that the evidence contained in the record supports the Director's determination that the Applicant is inadmissible due to misrepresentation. We further find that the Applicant has established extreme hardship to a qualifying relative.

#### A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. Specifically, the record indicates that the Applicant filed a Form I-130, Petition for Alien Relative, and Form I-485, Application to Register Permanent Residence or Adjust of Status, in 2008, based on her marriage to a U.S. citizen. While both were denied, it was subsequently discovered that the Applicant was never married to that individual. The Applicant claims she was unaware of the nature of the false information submitted with that application and that the preparer was the one responsible for its fraudulent contents. She states that she was trying to obtain work authorization through the preparer.

The record contains a news report from the U.S. Attorney's Office in the Southern District of California announcing the conviction of an immigration forms preparer on several counts of computer and immigration fraud. The Applicant claims this preparer is the one who prepared her 2008 application.

During an interview with USCIS the Applicant acknowledged that she had issued several checks to the preparer discussed above and had received a work permit with his assistance. The Applicant signed her 2008 adjustment of status application and Form G-325A, Biographic Information, which both listed a spouse and included information including his name and date and place of birth and the date and place of marriage. Because U.S. Citizenship and Immigration Services (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. Policy Manual Volume 8, Admissibility, Part J – Fraud and Willful Misrepresentation, Chapter 3(D)(1). The Applicant has submitted no evidence to support her claim that she was unaware of the false information contained on her application. A foreign national seeking admission must establish admissibility "clearly and beyond doubt." *See* section 235(b)(2)(A) of the Act; *see also* section 240(c)(2)(A) of the Act. The same is true for demonstrating admissibility in the context of an application for adjustment of status. *See generally Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir.

2008); *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008); *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). Based on the false information on the adjustment of status application filed by the Applicant, we find the record to support the Director's determination that she is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation.

#### B. 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 the Applicant's spouse. Evidence submitted by the Applicant includes, but is not limited to: statements from the Applicant and her spouse; medical records for the Applicant's spouse; bills and financial records for the Applicant and her spouse; tax records for the Applicant's spouse; photographs of the Applicant, her spouse and other family members; a copy of a residential lease; and birth and marriage certificates for the Applicant.

An examination of the record reveals substantial and probative evidence of the medical conditions of the Applicant's spouse, including medical documentation of other conditions not listed above such as hyperlipidemia, obesity and insomnia. These documents include visitation records, lab tests, notes by attending physicians and their medication treatment plans, and receipts for the purchase of prescription medications. The documents span a period of several years and support her claims of medical issues and treatment plans. This evidence demonstrates that the Applicant's spouse suffers from several severe medical conditions and must regularly seek medical services and take numerous medications for treatment. If the Applicant's spouse were to relocate to the Philippines with the Applicant it would disrupt the continuity of her medical care and result in an extreme hardship. This demonstrates that the Applicant's spouse would experience a physical hardship if the Applicant were removed because she would not have her spouse to help administer her medications or take her to her medical appointments.

With regard to the emotional and psychological hardships, the Applicant's spouse has stated she is deeply in love with the Applicant, that they have known each other for 41 years, and that she cannot envision life without her. The Applicant's spouse noted that she has been diagnosed with major depressive disorder and has type-two diabetes and that the Applicant does her insulin injections because her hands tremble too much. She states that she is completely dependent on the Applicant emotionally and physically. The Applicant's spouse states that she cannot work due to her conditions and she would not be able to meet her financial obligations due to her disabilities if the Applicant were removed, resulting in great emotional stress.

In addition to these considerations, the record contains a psychological assessment of the Applicant's spouse. The report provides a background profile of the Applicant's spouse discussing her medical and personal background. The assessment states that she has been diagnosed with major depressive disorder and is attending therapy sessions. The record contains other medical records which appear to be related to her ongoing therapy. This evidence is sufficiently probative to demonstrate that the Applicant's spouse would experience psychological and emotional hardship due to separation.

As discussed above, the record establishes that the Applicant's spouse suffers from numerous medical conditions and needs daily support to manage the physical demands of her conditions. Other evidence in the record, such as financial records and tax records, demonstrates that the Applicant and her spouse reside together. Tax records indicate that the Applicant provides the income for their household, and these and other financial records demonstrate that the Applicant's spouse, being unable to work due to her medical conditions, would suffer financial hardship if the Applicant were removed due to significant loss of household income.

The record also contains numerous photographs of the Applicant and her spouse which date back to 1996. These photographs lend support to the Applicant's assertion that she and her spouse have been in a long-term relationship. In light of the psychological assessment, evidence of the strong emotional bonds that would be severed, and the physical hardship of losing her caretaker, we find the record to establish that the Applicant's spouse would experience extreme hardship due to separation.

### 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. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). We must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf 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). In evaluating whether to favorably exercise discretion,

the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country'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 the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*Id.* at 301 (citations omitted). We must also consider "[t]he underlying significance of the adverse and favorable factors." *Id.* at 302. For example, we assess the "quality" of relationships to family, and "the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed]." *Id.* (citation omitted).

*Matter of J-S-C-*

We find the negative factors in this case to include the Applicant's misrepresentations on her 2008 application for adjustment of status and periods of unauthorized employment during her residence in the United States.

The positive factors in this case include the presence of her spouse and other family members in the United States, the extreme hardship her spouse would experience due to her inadmissibility, her long term residence in the United States, and the lack of any criminal record during her residence in the United States. In addition, based on the personal attestations and evidence of emotional and psychological hardship in the record, the Applicant would experience the emotional and psychological hardship of separation from her spouse. Although the Applicant's misrepresentation and unauthorized employment are serious matters, we find that the positive factors outweigh the negative factors in this case and that the Applicant warrants a favorable 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 met that burden. Accordingly, we sustain the appeal.

**ORDER:** The appeal is sustained.

Cite as *Matter of J-S-C-*, ID# 16222 (AAO May 10, 2016)