



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

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

MATTER OF A-J-N-V-

DATE: MAY 10, 2016

APPEAL OF NEWARK, NEW JERSEY FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Colombia, 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 to lawful permanent resident 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, Newark, New Jersey, denied the application. The Director concluded that the Applicant was inadmissible for fraud or misrepresentation. The Director then determined that the Applicant had not demonstrated extreme hardship to his spouse, and although the Applicant had demonstrated that his father would experience extreme hardship upon relocation, he had not shown extreme hardship to him upon separation.

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 extreme hardship to his spouse and father upon separation and relocation.

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 procuring a nonimmigrant visa and entry into the United States by misrepresenting his marital status as married with children when he in fact had no children and was unmarried. 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 presented on appeal are whether the Applicant's spouse would experience extreme hardship if the waiver were denied or whether his father would experience extreme hardship upon separation from the Applicant. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.¹ The claimed hardships to the

¹ The record establishes that the Applicant misrepresented himself as being married and having two children on his DS-156, Nonimmigrant Visa Form. On his Form I-601, he asserted that he made the misrepresentation in order to obtain a nonimmigrant visa. The Applicant is therefore inadmissible under section 212(a)(6)(C)(i) for fraud or willful misrepresentation.

Applicant's spouse from separation are loss of income and the emotional hardships of separation. The claimed hardships to his spouse upon relocation are financial hardship, the emotional hardships of separation from family, and the physical hardships of exposure to violent crime in Columbia. The claimed hardships to the Applicant's father from separation are medical hardship and the emotional hardships of separation.

The evidence in the record, considered cumulatively, establishes that the Applicant's father would experience extreme hardship if he remains in the United States without the Applicant. We also find that the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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 his spouse or father. In support of his hardship claim the Applicant submitted the following evidence. With the Form I-601, he provided an affidavit from himself and his spouse, a statement from his siblings, letters of support for the Applicant, and letters from his and his spouse's employer. He also submitted immigration documents, income tax records, wage statements, a rental lease agreement, utility invoices, medical records, a birth certificate, and credit card statements. With the appeal, the Applicant submits non-precedent decisions, a death certificate, additional wage statements, a lease agreement, an Internal Revenue Service document on food and clothing standards, immigration documents, and documentation on international schools in Colombia.

Upon review of the record, we find that the Applicant has demonstrated that his father would experience extreme hardship if he remains in the United States while the Applicant relocates to Columbia.

B. 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).

The favorable factors include the extreme hardship to the Applicant's father if the waiver is denied; the Applicant's spouse, child, and six siblings in the United States; the Applicant's 12-year residence in the United States; his employment while residing in the United States; letters of support for the Applicant; the passage of 12 years since his obtaining a nonimmigrant visa and entry into the United States by fraud or misrepresentation; and his statement of remorse for his actions. The unfavorable factors include the Applicant's misrepresentation in 2003; the Applicant's conviction in 2007 for driving while intoxicated, refusing to take a breath test, driving without a license, and for failing to report a motor vehicle accident; and his unauthorized stay and employment in the United States. In this case, we find that the favorable factors outweigh the adverse 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 A-J-N-V-*, ID# 17595 (AAO May 10, 2016)