



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

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

MATTER OF D-B-

DATE: MAY 11, 2016

APPEAL OF ORLANDO, FLORIDA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of the United Kingdom, 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, Orlando, Florida, denied the application. The Director concluded that the Applicant was inadmissible for fraud or willful misrepresentation.¹ The Director then determined 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.

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 not disclosing his past criminal convictions on an application for an immigration benefit. 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 Director mistakenly indicated that the Applicant was inadmissible under section 212(a)(9)(B) of the Act for unlawful presence in the United States.

(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 issue presented on appeal is whether the Applicant is eligible to apply for a waiver under section 212(i) of the Act. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.²

² On February 13, 1981, the Applicant filed Form I-506, Application for Change of Nonimmigrant Status. On the Form I-506, he indicated that he "[had] not been arrested or convicted of any criminal offense in the United States or in any foreign country." However, the record reflects that the Applicant was convicted of crimes in the United Kingdom prior to 1981. He was convicted of burglary and theft non-dwelling in 1972 and sentenced to a 6-month suspended jail term. He was convicted of receiving and conspire/robbery in 1969 and sentenced to a 12-month imprisonment term for each crime, which was to run concurrently. He was convicted of stealing or breaking any glass, woodwork, metal on any building or private property in 1968 and sentenced to a 12-month conditional discharge. In 1967, he was convicted of

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The evidence in the record does not establish that the Applicant has a qualifying relative for purposes of a waiver of inadmissibility under section 212(i) of the Act, namely, a U.S. citizen or lawful permanent resident spouse or parent. The Applicant is thus statutorily ineligible for a waiver. Because the Applicant is ineligible for a waiver, we will not address whether he merits a waiver as a matter of discretion.

A. Waiver

The Applicant is seeking under section 212(i) of the Act a waiver of inadmissibility. He stated that his U.S. citizen daughter and U.S. citizen and lawful permanent resident sons are his qualifying relatives who will experience extreme hardship if the application is denied. Section 212(i) of the Act states that a waiver is available to an applicant who is the spouse or son or daughter of a U.S. citizen or an alien lawfully admitted for permanent residence.³ The Applicant's daughter and sons are therefore not qualifying relatives under section 212(i). Accordingly, their hardships do not qualify for consideration under the statute. No evidence in the record establishes that the Applicant has a qualifying relative for purposes of a section 212(i) waiver of inadmissibility. The Applicant is thus statutorily ineligible for a waiver.

B. Discretion

Since the Applicant is ineligible for a waiver, we will not address whether he merits a waiver as a matter 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.

ORDER: The appeal is dismissed.

Cite as *Matter of D-B-*, ID# 16487 (AAO May 11, 2016)

simple larceny, common assault on adult, and possessing an offensive weapon in public. He was sentenced to pay a fine for each crime. The Applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting his criminal record.

³ The Director mistakenly stated that under section 212(i) of the Act the Applicant's U.S. citizen children are qualifying relatives.