



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

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

MATTER OF S-R-L-N-

DATE: MAY 11, 2016

APPEAL OF TUCSON, ARIZONA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Mexico, 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, Tucson, Arizona, denied the application. The Director concluded that the Applicant was inadmissible for fraud or misrepresentation. The Director then determined that the Applicant had not established extreme hardship to his parents if the waiver is denied.

The matter is now before us on appeal. In the appeal, the Applicant claims that the Director erred in not finding that his parents' 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 admission to the United States by falsely presenting himself as a nonimmigrant. 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 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 parents would experience extreme hardship if the waiver is denied, whether they remained in the United States without him or accompanied him to Mexico. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.¹ The Applicant claims that his parents would experience extreme hardship if they remained in the United States without him. The claimed hardships to his parents from separation are loss of financial support, physical and medical difficulties, and the emotional hardships of separation. The asserted hardships from relocation are separation from family in the United States, financial hardship from the inability to obtain employment, and physical hardship from inadequate medical care and exposure to violent crime.

¹ In a July 11, 2014 sworn statement, the Applicant stated that he procured admission into the United States in 1999, 2006, 2007, 2008, and 2009 by presenting a Border Crossing Card and claiming that his purpose for entering the United States was to visit relatives or go shopping when in fact his intention was to resume his residence with his spouse and children in the United States.

The evidence in the record, considered both individually and cumulatively, does not establish that the Applicant's mother or father would experience extreme hardship if the waiver is denied. The record does not contain sufficient evidence to establish the hardship claimed, and for the hardship established, the record does not show that it rises above the common consequences of removal or refusal of admission to that of extreme hardship. Since the Applicant has not shown extreme hardship, we will not address whether he merits a waiver as a matter of discretion.

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 parents. In support of his claim of hardship to his parents, the Applicant submitted the following evidence. With the Form I-601, he submitted statements from himself and his parents; letters of support from relatives and community members; income tax records; utility invoices; title documentation; escrow and mortgage statements; documentation about medical expenses; copies of checks; bank account statements; wage statements; an insurance letter; medical and psychological records; Medicare benefit documentation; employment records; photographs; and reports on Mexico. The record also contains copies of birth and marriage certificates and immigration documents. On appeal, the Applicant submits a brief.

The Applicant claims that if his parents remain in the United States without him, they will suffer financial, medical, and emotional hardship. As to the financial hardship, the Applicant stated that his father works as a farm laborer and his mother is retired. He indicated that a recent work injury affected his father's ability to work and that he assists his parents financially. His parents claimed that their sons in Mexico struggle to find employment and that only the Applicant has helped them financially. In support of the referenced hardship, the Applicant submitted records demonstrating his parents' income, expenses, and bank accounts. These documents show that in 2014 his parents earned a combined income exceeding \$50,000. Their income included about \$20,000 in wages from the Applicant's father, and the remainder was from pension, retirement, and Social Security payments. The Applicant also submitted evidence that his parents qualify for services for low-income families, including utility subsidies and food stamps. The record also reflects that in 2013 the Applicant earned approximately \$11,000 in gross income which supports himself, his spouse, and his two children. The record does not contain evidence of specific payments made by the Applicant to his parents, or of payments made by him on their behalf. Given the disparities between their incomes and the lack of specific evidence of financial assistance or dependence, the record does not establish that his parents would face extreme financial hardship in his absence.

The Applicant also asserts that his parents would suffer medical hardship if he resides in Mexico while they remain in the United States. In support, the Applicant submitted his mother's medical records showing her evaluations and treatments for leg pain from an injury, lower back pain, and right ankle surgery. The records also state that she has hypertension, diabetes without complication, and stenosis. He also submitted a statement from his mother, corroborated by her medical records, describing injections she received to alleviate pain. His mother stated that she relies on the

Applicant for transportation to medical appointments and comfort after treatments. She also stated that he purchased medical equipment for her that was not covered by insurance but no evidence was submitted to substantiate this claim. The records from her ankle surgery state that she is doing well and had only mild discomfort. Records further show that the weakness in her left leg went away completely, and the injections relieved her leg pain. The July 21, 2014 report from her physician stated that he believed that the Applicant's mother had stenosis but that based on the final magnetic resonance imaging (MRI) results a radiologist determined that she had no stenosis. Other medical records indicate that she has stenosis and hypertension but do not indicate whether these conditions are serious or require assistance in order to manage them. The Applicant's father also asserted that he relies on the Applicant's assistance for medical appointments; however, the Applicant submitted no evidence of his father's current medical condition or need for assistance. In sum, the medical records do not establish that the Applicant's mother or father currently depend on him for their medical care.

Regarding emotional hardship, the Applicant's mother asserted that she needs the Applicant to help alleviate her depression. The Applicant's mother stated that the Applicant provided her with emotional support during her separation from her spouse, and she stayed with him and his family while she recovered from surgery. She maintained that she has high blood pressure and headaches from worrying about his immigration problems and his safety in Mexico. She further stated that she worries about the adverse impact that separation will have on his spouse and children, born in 1991 and 1994. His father stated that he has a close relationship with the Applicant and has panic and chest aches when thinking about his possible departure. The Applicant submitted statements from relatives confirming that he has a close relationship with his parents. He also submitted a psychological evaluation of his mother stating that she has depression and anxiety, and her condition is exacerbated from stress. The licensed psychologist stated that the Applicant has a close relationship with his mother and helped her emotionally during her bone shots, and his mother worries that without his financial assistance she might not be able to take care of her medical needs. As stated above, the Applicant submitted no evidence establishing his financial assistance to his parents. Furthermore, the record reflects that the Applicant's mother and father travel to Mexico almost daily to visit their two sons and relatives. They would be able to continue these visits and maintain a close relationship with the Applicant while he resides in Mexico. We acknowledge that denial of the Applicant's waiver would complicate their ability to visit each other freely, but given their geographic proximity and ability to visit Mexico frequently, the evidence does not establish that separation would sever their emotional ties or demonstrate that their emotional hardship alone would constitute extreme hardship.

In this case, the evidence in the record, considered both individually and cumulatively, does not establish that the Applicant's mother or father would experience extreme hardship if they remained in the United States in his absence.

Concerning relocation to Mexico, the Applicant claims that his mother and father would suffer financial, physical, and emotional hardships. He asserts that they would not be unable to find employment sufficient to cover their living expenses. The tax records indicate that his parents earn over \$20,000 annually from pensions and annuities. The evidence does not show that these

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Matter of S-R-L-N-

payments would cease if his parents relocate, and the Applicant did not submit evidence of his parents' likely expenses in Mexico or discussed whether they would be able to live with their two sons in Mexico. Consequently, the Applicant has not shown the degree of financial hardship they would experience if they were to reside in Mexico.

The Applicant claims that his mother and father would experience physical hardship from inadequate medical care and increased exposure to crime. The Applicant has not demonstrated that his parents have serious health conditions for which medical care would be unavailable or inaccessible in Mexico. With respect to crime in Mexico, the U.S. Department of State travel warning for [REDACTED] Mexico, states that areas of [REDACTED] can be extremely dangerous for travelers. See U.S. Department of State, *Mexico Travel Warning* - [REDACTED] <https://travel.state.gov/content/passports/en/alertswarnings/mexico-travel-warning.html> (last updated Apr. 15, 2016). As stated above, the Applicant's parents visit family in the town of [REDACTED] almost daily. The Applicant has not provided evidence that his parents or family members have been threatened or harmed, and [REDACTED] is not an identified area of concern. While the travel warning states that travelers should defer non-essential travel to areas east of [REDACTED] the Applicant has not submitted evidence that his parents would live in, or otherwise travel to, that region. The record is therefore insufficient to establish the degree of their physical hardship from relocation.

The evidence in the record, considered both individually and cumulatively, does not establish that the Applicant's mother or father would experience extreme hardship if they were to relocate to Mexico with him.

In this case, the record does not establish that denial of the waiver would result in extreme hardship to the Applicant's parents if they were to remain in the United States or relocate to Mexico.

B. Discretion

Since the Applicant has not demonstrated extreme hardship to a qualifying relative or qualifying relatives, we need not consider whether he 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.

ORDER: The appeal is dismissed.

Cite as *Matter of S-R-L-N-*, ID# 16111 (AAO May 11, 2016)