



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

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

MATTER OF L-J-C-R-

DATE: MAY 23, 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 Peru, 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, Newark, New Jersey, denied the application. The Director concluded that the Applicant was inadmissible for fraud or misrepresentation. The Director further determined that the Applicant had not established extreme hardship to his spouse if the waiver application is denied.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in finding him inadmissible. He further claims that the Director erred in finding that his spouse's hardship would not be extreme.

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 admission into the United States by presenting a fraudulent nonimmigrant visa.

Section 212(a)(6)(C)(i) of the Act renders inadmissible any foreign national 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 the Act.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national.

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 is inadmissible for fraud or misrepresentation, and if so, whether his spouse would experience extreme hardship if the waiver is denied. The Applicant claims that he is not inadmissible for fraud or willful misrepresentation since he was unaware that his nonimmigrant visa was fraudulent. He also asserts that his U.S. citizen spouse would suffer extreme hardship if the waiver is denied. The claimed hardships to his spouse from separation are loss of financial support, medical hardship, and the emotional hardships of separation. The claimed hardships from relocation are separation from family in the United States, the inability to obtain employment, a lower living standard, cultural hardship, emotional suffering resulting from hardships to her child, and increased exposure to crime and violence.

The evidence in the record, considered both cumulatively, establishes that the Applicant’s spouse would experience extreme hardship upon relocation to Peru. The record further establishes that the Applicant merits a waiver of inadmissibility as a matter of discretion.

### A. Inadmissibility

The Director found that the Applicant was inadmissible for fraud or willful misrepresentation, specifically, for obtaining entry into the United States in January 19, 2002, by presenting a fraudulent nonimmigrant visa. The principal elements of a misrepresentation that renders a foreign national inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In

(b)(6)

*Matter of L-J-C-R.*

*Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

*Id.* at 447. The Supreme Court has addressed the issue of material misrepresentations in *Kungys v. United States*, 485 U.S. 759 (1988). The Supreme Court stated that misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

The record contains the Applicant's sworn statement in which he stated that he obtained a nonimmigrant visa through a former Peruvian military official who worked at the U.S. embassy. The Applicant also stated that he knew that the individual was not a U.S. consulate officer. Although the Applicant asserts that he did not know that his nonimmigrant visa was fraudulent, the record demonstrates that he obtained his visa from an individual whom he knew was not a U.S. government official. Accordingly, he is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission into the United States by fraud or willful misrepresentation.

#### B. Waiver

In this case, the Applicant must demonstrate that denial of the application would result in extreme hardship to his spouse. In support of his hardship claim, the Applicant submitted the following evidence. With the Form I-601, he submitted statements from himself and his spouse and a psychological evaluation of his spouse. The record also contains tax and financial records, marriage and divorce records, photographs, and copies of immigration documents. On appeal, the Applicant submits statements from himself, his spouse, and other family members; and documentation on crime and safety in Peru. He also resubmits the psychological evaluation.

The Applicant's spouse claims that she will suffer emotional, cultural, and financial hardship if she relocates to Peru. She states that for 40 years she has lived in the United States and all her close family members are here. She declares that her sons, born in 1988 and [REDACTED] and daughter, born in 1991, live with her and the Applicant. She asserts that her daughter takes care of her brother and has a close relationship with him. The Applicant's spouse asserts that if she and her youngest child relocate abroad, it would tear her family apart, and she would suffer from seeing her youngest child separated from his siblings. The Applicant's stepdaughter states that she helps raise her brother and separation from him would devastate her. Regarding cultural hardship, his spouse asserts that she is unfamiliar with Peru and worries that she will not adjust to life there. She and the Applicant further declare that their child does not speak Spanish and that they are concerned that relocation will adversely impact their son and his education. The Applicant submitted a psychological evaluation of his spouse from a licensed clinical psychologist. This evaluation states that his spouse suffers from a stress-related disorder and that she would have difficulty adapting to life in Peru because of her age,

her acculturation to life in the United States, and her unfamiliarity with Peru. As for employment, the Applicant declares that he is 46 years old and his spouse is 50, and jobs in Peru are scarce for older workers. He also submitted a U.S. Department of State crime and safety report on Peru. It states that Peru has domestic terrorist groups involved in narcotics trafficking and many areas are dangerous because of domestic terrorism and violent crime.

The record establishes that the Applicant's spouse has never been to Peru and is unfamiliar with the country, culture, and customs in Peru. The record further demonstrates that she is 50 years old and has lived in the United States for 40 years, she has been gainfully employed in the United States for many years, her family ties are in the United States, and that long-term separation from her community, her extended family, and the employment which she has held for many years will cause her significant hardship. The record also establishes that her anxiety about the adverse impact of relocation on her child and his education will further aggravate her emotional hardship. In this case, when the evidence is considered together, it establishes that the Applicant's spouse will experience extreme hardship if she relocates to Peru.

### 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. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident with the social and humane considerations presented 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). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the foreign national and his or her family, service in the U.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 good character. *Id.*

In this case, the unfavorable factors are the Applicant's entry to the United States by fraud or willful misrepresentation and his unauthorized status and employment in the United States. The favorable factors are the hardship to the Applicant's spouse and child if the waiver is denied; the Applicant's community and family ties to the United States; his 14 years of residence in the United States; the letters of support for the Applicant; his gainful employment from 2013-2014 and payment of taxes in 2013; and the passage of 14 years since his fraud or willful misrepresentation, as detailed above. In this case, when the favorable factors are considered together, they 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 L-J-C-R-*, ID# 16137 (AAO May 23, 2016)