



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

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

MATTER OF A-N-C-

DATE: OCT. 3, 2016

APPEAL OF NEW YORK, NEW YORK FIELD OFFICE DECISION

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

The Applicant, a native and citizen of the Dominican Republic, 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 that of a 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 District Director, New York, New York, denied the application, concluding that the Applicant was inadmissible for fraud or misrepresentation and had not established extreme hardship to his spouse if the waiver were to be denied.

The matter is now before us on appeal. The Applicant argues that his spouse would suffer extreme hardship if the waiver is denied.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking to adjust status to that of a lawful permanent resident and has been found inadmissible for a fraud or misrepresentation. Specifically, he had not disclosed in his 2013 visa application that he had been unlawfully present in the United States.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), 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 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 Applicant does not contest his inadmissibility for fraud or misrepresentation, a finding supported by the record. The issues in this case are whether he is eligible to apply for a waiver of inadmissibility, and if he is eligible, whether he has established extreme hardship to his spouse were she to remain in the United States without him or accompany him abroad.

The evidence in the record includes income tax returns, bank records, birth certificates, a marriage certificate, retirement documentation, loan documents, and invoices. The entire record was reviewed and considered in rendering a decision on the appeal.

A. Eligibility to Apply for a Waiver

Finding that the Applicant was inadmissible to the United States, the Director issued a request for evidence for a completed waiver application. The Applicant provided a timely response, which included a fee waiver request, but it was rejected and returned to the Applicant. The Applicant refiled the waiver application. A month later, his Form I-601 was denied based on the absence of a pending Form I-485.

Because he filed his Form I-601 after he filed the application to adjust his status to that of a lawful permanent resident and while that application was still pending, the Applicant is eligible to apply for

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a waiver of inadmissibility. Furthermore, the record shows that the Applicant had initially filed his Form I-601 and fee waiver request within the period specified in the request for evidence.

B. Hardship

In this case, the Applicant must demonstrate that denial of the application would result in extreme hardship to his spouse.

The Applicant's spouse asserted that she will suffer financial, emotional, and psychological hardship if she remains in the United States in his absence. She stated that she needs the Applicant to help care for his child (who was born in [REDACTED] or else she would be forced to quit her job, where she has worked for 9 years, to raise his daughter alone. She maintained that her family members do not live nearby and are unable to help. She also declared that she worries that separation from him might cause her to have postpartum depression.

The record contains insufficient evidence to demonstrate that his spouse would experience financial, emotional, and psychological hardship in his absence. Regarding financial hardship, the 2013 income tax return shows that she is gainfully employed earning \$52,000 a year. Her wage records reflect net income of \$2,860 a month. The record also contains evidence that she has savings of \$27,000, and her loan, utility, insurance, and food expenses total \$1,600 a month. There is no documentation in the record showing her household rent or childcare expenses. Nor does the record establish that the Applicant would be unable to assist in the finances of the household while residing abroad. The record therefore contains insufficient evidence to establish the severity of his spouse's financial hardship in his absence. It does not show that she would be unable to support herself and her child without him. Furthermore, although his spouse indicates that she worries about separation from him, apart from her statement, she has provided no evidence in support of her emotional and psychological hardship. The record does not establish that she will face greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission. There is no documentation showing that her hardships are any different from other families separated as a result of immigration violations. Although we are not insensitive to his spouse's situation, the record does not establish that the hardships she would face are beyond the common consequences of refusal of admission. When we consider the evidence in the record in the aggregate, it does not establish that the Applicant's spouse would suffer extreme hardship were she to remain in the United States without him.

Regarding relocation, the Applicant provided only a brief statement and no supporting evidence about the hardship his spouse would experience residing in Spain. He has therefore not established extreme hardship to her were she to relocate to Spain. Furthermore, the record does not indicate that the Applicant is a citizen of Spain and contains no evidence he holds any lawful status there or that he would be permitted to reside there now. In addition, the Applicant has made no claim and provided no evidence of extreme hardship to his spouse were she to relocate with him to his country of citizenship, the Dominican Republic, which is also her native country.

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. He is inadmissible for fraud or misrepresentation and has not demonstrated extreme hardship to his spouse if he is refused admission to the United States. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of A-N-C-*, ID# 118570 (AAO Oct. 3, 2016)