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

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

MATTER OF [REDACTED]

DATE: OCT. 4, 2016

APPEAL OF NEW YORK, NEW YORK DISTRICT OFFICE DECISION

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

The Applicant, a native and citizen of Montenegro, seeks a waiver of inadmissibility for fraud or misrepresentation and for unlawful presence. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i), and § 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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. The Director concluded that the Applicant was inadmissible for fraud or misrepresentation and unlawful presence and that he had not established extreme hardship to a qualifying relative. The Director further concluded that a waiver of inadmissibility was not merited as a matter of discretion.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and states that the Director erred in finding that he was inadmissible and that he had not established extreme hardship to his spouse.

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

I. LAW

The Applicant is seeking to adjust status to that of a lawful permanent resident and has been found inadmissible for fraud or misrepresentation and for unlawful presence. Specifically, in April 1993, he attempted to obtain entry into the United States by presenting a counterfeit visa. The Applicant was removed from the United States in [REDACTED] 1993. In March 2005, he reentered the United States with a visitor's visa and claims to have left the country in 2010, thereby accruing 5 years of unlawful presence. In September 2011, he returned to the United States on a visitor's visa and has not left.

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.

Section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i), provides that a foreign national who has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(ii) of the Act provides that a foreign national is deemed to be unlawfully present in the United States if present in the United States after the expiration of the period of authorized stay or is present in the United States without being admitted or paroled.

Section 212(a)(9)(B)(v) of the Act provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent.

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 inadmissibility for unlawful presence. There are two issues on appeal. First, whether the Applicant is inadmissible for fraud or misrepresentation. Second, whether

he established extreme hardship to his spouse if she remains in the United States without him or accompanies him to Montenegro.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. Specifically, in April 1993, he attempted to obtain entry into the United States by presenting a counterfeit visa.

The Applicant states that he is not inadmissible for fraud or misrepresentation because he had obtained the visa from his father's friend and did not know that it was fraudulent. Although the Applicant claims to have no knowledge of the fraudulent visa, the record contains a 1993 sworn statement of his testimony, which states that he paid his father's friend \$6,000 for the visa. In light of these circumstances, the Applicant had reason to know that the visa was fraudulent or had been fraudulently obtained. The Applicant has not submitted evidence to support his claim that he was unaware that the visa he used when attempting to enter the United States in 1993 was fraudulent. Furthermore, our records show that the Applicant had failed to disclose that he had been removed from the United States on subsequent visa applications. The record therefore contains sufficient evidence to establish the Applicant's inadmissibility for fraud or misrepresentation.

B. Hardship

The Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives, in this case his spouse.

The Applicant's spouse asserted that she will suffer emotional and psychological hardship in his absence. She declared that she has known the Applicant for 10 years, and they had lived together for 4 years before he returned to Montenegro in 2010. She stated that she had just ended a relationship and was 6 months pregnant when they reconnected and moved in together in 2014. She declared that they decided to marry 2 months after she gave birth. She stated that he has been a supportive spouse and father and she feels depressed and overwhelmed by his immigration situation. She declared that she has been to a psychiatrist for anxiety attacks and was prescribed medication, but it has not helped. The Applicant submitted a psychological assessment which stated that his spouse had experienced traumatic events in Albania during her adolescence and was granted asylum in the United States.¹ The psychiatrist stated that the Applicant's spouse had little or no social support after the traumatic event took place and that the Applicant has provided her with this needed support. The psychiatrist further stated that the Applicant's spouse reported that when her spouse's visa problems emerged, "her world cracked." The psychiatrist indicated that the Applicant's spouse is under stress from having to both work and care for her child and that she worries that she will lose a stable, supportive spouse who has been an involved co-parent. The psychiatrist indicated that the Applicant's spouse's present situation has resulted in anxiety and depression that has been

¹ Our records show that his spouse was granted asylum in 2008.

exacerbated by her past trauma. The psychiatrist indicated that the Applicant's emotional and psychological support has been crucial for his spouse and for her ability to parent her child, his presence is a stabilizing and positive factor, and it would be an extreme emotional hardship if he were not in her life. When the evidence of emotional and psychological hardship is considered in the aggregate, we find that it establishes that the Applicant's spouse would suffer extreme hardship if she were to remain in the United States without him.

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.*

The favorable factors in this matter are the hardship to the Applicant's spouse and stepchild if the waiver were to be denied. The unfavorable factors in this matter are the Applicant's fraud or misrepresentation, as detailed above; his unlawful presence and employment; and his removal from the United States. 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. He has demonstrated extreme hardship to his spouse if the waiver were to be denied and that he merits a waiver of inadmissibility as a matter of discretion.

ORDER: The appeal is sustained.

Cite as *Matter of A-P-*, ID# 117153 (AAO Oct. 4, 2016)