



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

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

MATTER OF M-A-

DATE: OCT. 11, 2016

APPEAL OF KENDALL FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Pakistan, 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 Kendall Field Office Director, Miami, Florida, denied the application. The Director concluded the Applicant had not established extreme hardship to a qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant resubmits previous evidence and states that the Director erred by mischaracterizing the evidence in the record and failing to accord proper weight to evidence in the record. The Applicant states that the record contains sufficient evidence to establish that a qualifying relative will experience extreme hardship due to his inadmissibility.

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, the Applicant attempted to enter the United States in 1990 with a fraudulent passport and was convicted for violating 18 U.S.C. § 1546, fraud and misuse of visas, permits, and other documents. He did not reveal his prior attempt to enter with a fraudulent passport or conviction when applying for a visa to enter the United States in 1997. The Applicant does not contest this inadmissibility finding on appeal.

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 issue on appeal is whether the Applicant has established that a qualifying relative will experience extreme hardship due to his inadmissibility. The Director found that the Applicant had not established extreme hardship to a qualifying relative. On appeal, the Applicant claims the Director mischaracterized evidence and failed to properly consider evidence that was submitted into the record. We find the evidence in the record to establish that a qualifying relative will experience extreme hardship and that the Applicant merits a favorable exercise of discretion.

A. Extreme Hardship

In this case, the Applicant must demonstrate that denial of the application would result in extreme hardship to his spouse. The record contains tax returns and other financial records, medical records for the Applicant’s spouse, a psychological report for the Applicant’s spouse, affidavits from the Applicant and his spouse, a sworn statement from the Applicant, and travel warnings and human rights reports on Pakistan from the U.S. State Department.

The Applicant has claimed that his spouse will experience financial, medical and psychological hardship if he is removed from the United States. The Applicant also claims that his spouse would experience medical and physical hardship upon relocation to Pakistan.

The Applicant explains that his spouse suffers from several medical conditions, including asthma, diabetes, hypertension and stomach ulcers, and that she is dependent on him emotionally and physically. He states that if he were removed, his spouse would not be able to maintain their family business and she would experience a financial hardship. The Applicant states that his spouse is suffering side effects from the medication she has to take for her medical conditions, and that the prospect of him being removed has resulted in psychological hardship to her.

The record contains hospital discharge records, medical visitation records and a statement from the Applicant's spouse's doctor. The hospital discharge records detail medical problems she had in 2007 when she was taken to the emergency room and indicate that she was suffering from symptoms related to asthma. The statement from the Applicant's spouse's doctor states that the Applicant's spouse suffers from severe asthma with repeated attacks; diabetes, which requires medications for treatment; hypertension, which requires three medications; and recurring stomach ulcers, which have resulted in abdominal bleeding requiring blood transfusions. The letter states that her prognosis is poor, she requires frequent monitoring by her husband and frequent physician visits, and without the Applicant's presence her health would suffer.

With regard to the financial hardship the Applicant's spouse would experience if he were removed, the record contains copies of tax returns, business records, and a mortgage statement. The mortgage statements indicate the Applicant's spouse has a mortgage on the property where they reside. The business records submitted into the record establish that the Applicant and his spouse started a catering business in 2011, and the tax records indicate that their income is derived from their catering business. While the record does not make clear how the responsibilities for operating their business are divided between the Applicant and his spouse, it does make clear that if the Applicant were removed, the income derived from the business would likely be reduced.

With regard to the psychological hardship experienced by the Applicant's spouse, the record contains statements from the Applicant and his spouse and a psychological report. The Applicant's spouse has explained that she is dependent emotionally on the Applicant, particularly due to her medical conditions, and that they have been married since 1995, a period of 21 years. She states that without him she would be devastated. She also states that she fears returning to Pakistan because it has become a violent country and that the thought of having to return there with her spouse is causing her distress because of the violence and discrimination against women and the potential disruption of her medical treatment.

The psychological assessment contained in the record provides a detailed description of the psychological symptoms experienced by the Applicant's spouse, including feelings of being overwhelmed, decreased appetite, trouble sleeping, loss of motivation and thoughts of suicide. The report discusses how her medical conditions impacted her ability to work and how she relies on the Applicant for income and emotional support. The report concludes by stating the Applicant's Spouse suffers from Adjustment Disorder with mixed Anxiety and Depression and Dependent Personality Disorder.

If the Applicant's spouse were to relocate to Pakistan with him it would disrupt the continuity of her medical care by severing the ties she has with the doctors who have treated her and are familiar with her medical history. The record establishes that the Applicant's spouse takes numerous medications due to her medical conditions, and it is likely she would lose access to these medications if she were to relocate to Pakistan with the Applicant.

With regard to the conditions in Pakistan, the record contains background documentation on conditions throughout the country. The Travel Warning urges caution when travelling to Pakistan. The human rights report submitted into the record discusses the social, economic and political conditions in Pakistan and indicates that there are instances of abuse and discrimination against women.

As discussed above, the record indicates that the Applicant and his spouse own and operate a business in the United States and that the Applicant's spouse has a mortgage in her name for the home where they reside. If she relocated to Pakistan, she would experience hardship due to her medical conditions, concern over her safety, having to readjust to conditions there after almost 20 years in the United States, and having to leave her home and business in the United States. When these factors are considered in the aggregate, they demonstrate that the Applicant's spouse would experience extreme hardship if the Applicant's waiver application were denied.

B. 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 negative factors in this case include the Applicant's use of a fraudulent passport, his conviction for fraud, and subsequent failure to reveal this conviction when applying for a visa. The record also indicates that when the Applicant filed his Form I-485, Application to Register Permanent Residence or Adjust Status, in 2013, he did not reveal his 1990 conviction for attempting to enter the United States with an altered passport or that he had been arrested and charged with battery and aggravated assault. While the assault and battery charges were dismissed, the Form I-485 clearly asks if an applicant has been charged with any crimes while in the United States, and not just convicted.

The positive factors in this case include the Applicant's long-term residence in the United States and his long-term marriage with his spouse. The record demonstrates that they have been married since 1995 and traveled to the United States together in 1997. As discussed above, if the Applicant were removed, his spouse would experience hardships both upon relocation or if they were separated and she remained in the United States. The record contains many years of tax statements, indicating the Applicant and his spouse have continuously earned income and paid their taxes while residing in the United States. The Applicant and his spouse own and operate a catering business in the United States and have a mortgage for the property in which they reside. The Applicant does not have any criminal convictions on his record since his residence in 1997.

When the positive factors are viewed in their totality, we find that they outweigh the negative factors, and we will exercise favorable 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 met that burden. The record contains sufficient evidence to demonstrate that the Applicant's spouse would experience extreme hardship due to his inadmissibility. The record also demonstrates that the positive factors outweigh the negative factors when considering discretion.

ORDER: The appeal is sustained.

Cite as *Matter of M-A-*, ID# 121501 (AAO Oct. 11, 2016)