



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

MATTER OF J-J-B-

DATE: JUNE 29, 2018

APPEAL OF ORLANDO, FLORIDA FIELD OFFICE DECISION

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

The Applicant, a citizen of Haiti who resides in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A foreign national seeking to adjust status must be “admissible” or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). 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.

The Director of the Orlando, Florida Field Office denied the waiver, finding the Applicant inadmissible for fraud or misrepresentation and concluding he did not establish his U.S. citizen spouse, his only qualifying relative, would suffer extreme hardship as a result of his inadmissibility.<sup>1</sup>

On appeal, the Applicant submits additional evidence. He asserts the Director erred in not considering hardships in the aggregate and for not evaluating how hardship to non-qualifying relatives would contribute to his spouse’s hardship. Finally, he states that his spouse’s hardship rises to the level of extreme because many of the factors in the USCIS Policy Manual are present in his case.

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

#### I. LAW

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, is inadmissible. Section 212(a)(6)(C)(i) of the Act.

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<sup>1</sup> The Director also finds the Applicant is not eligible to adjust because he has not been inspected, admitted, or paroled and the Applicant addresses this finding on appeal. However, this finding pertains to the Applicant’s eligibility to adjust status to that of a LPR and does not directly relate to his eligibility for a waiver. Thus, we will not address this issue further.

There is a discretionary 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, and decades of case law have contributed to its meaning. 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).

Once the foreign national demonstrates the existence of the required hardship, he or she must then show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. When exercising our discretion, we “balance the adverse factors evidencing a [foreign national’s] undesirability as a permanent resident with the social and humane considerations presented on the [foreign national’s] behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 300 (BIA 1996)(citations omitted).

## II. ANALYSIS

The issue on appeal is whether the Applicant qualifies for a discretionary waiver. The Applicant does not contest his inadmissibility for fraud or misrepresentation. This finding is supported by the record, as it reflects he attempted to procure admission to the United States by presenting a photo-substituted French passport to immigration officials under the Visa Waiver Program.<sup>2</sup>

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<sup>2</sup> As a consequence, the Applicant was convicted of 18 U.S.C. § 1543 for False Use of a Passport, which may subject him to inadmissibility under section 212(a)(2)(A) of the Act for having been convicted of a crime involving moral turpitude (CIMT). Nevertheless, we need not evaluate whether the Applicant is additionally inadmissible under that section of the Act because a discretionary waiver for fraud or misrepresentation encompasses the requirements for a waiver of CIMT-related inadmissibility as well.

Because the Applicant's spouse does not indicate whether she intends to remain in the United States or relocate if the waiver is denied, the Applicant must establish that if he is denied admission, she would experience extreme hardship both upon separation and relocation.

The Applicant states that his spouse will suffer extreme emotional and financial hardship as a result of separation. She explains that she and the Applicant have been together for over 10 years and she relies on his support. In her statement, the spouse describes their relationship as one where the Applicant helps with daily childcare and household chores, as well as being financially and emotionally supportive. She asserts further that the impact of separation on their son, who is three years old, worries her. The spouse adds that she does not want her son to feel abandoned nor does she want to disrupt his childcare. The Applicant's spouse also expresses concern over being able to save for her son's academic future without the Applicant's help.

The Applicant submits a psychological evaluation, dated October 2016, in support. The psychologist indicates it was prepared after three interviews with the spouse; where the psychologist observed her mental state and established diagnostic impressions. The spouse reported the following symptoms: feeling sad and irritable; loss of motivation, decreased appetite, insomnia, psychomotor retardation, fatigue, decreased attention and concentration; and indecisiveness. She also reported feeling persistent worry, fear, nervousness, dizziness, headaches, tremors, sweaty palms, and stomach aches. During the interview, the psychologist provides the spouse endorsed thoughts of killing herself when she is stressed and frustrated, but denied any current thought or plan to do so. The spouse also stated she felt hopeful and wanted to take care of her son and family. She asserts her relationship with the Applicant has been negatively impacted by the stress and worry surrounding his immigration situation. She also expresses disappointment at their inability to visit family members due to their financial and immigration situation.

In addition to her symptoms, the psychologist explains that the Applicant's spouse has a history of trauma. The spouse reported that when she was 14 years old her mother left Haiti and came to the United States, leaving her in the care of siblings for one year. She stated she felt sad and lonely and had difficulty concentrating in school, feeling better once they were reunited.

As a result of this evaluation, the psychologist diagnoses the Applicant with major depressive disorder, recurrent episode without psychotic features and generalized anxiety disorder with panic attacks. The psychologist states that it is likely her traumatic history of separation from her mother makes her especially vulnerable to the adverse effects of loss and separation and expresses concern that her suicide risk factors could worsen as a result.

The psychologist recommended psychotherapy to help the spouse cope with current stressors and process her history of trauma. She also recommended the spouse undergo psychiatric evaluation to assess her need for psychotropic medications, adding that treatment is likely to have a supportive

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effect, but not a healing one because situational stressors aggravated her clinical disorders. The record does not contain documentation showing the spouse has pursued any of these treatment options. However, the evaluation acknowledged, that in the psychologist's experience, there would be obstacles to the spouse following up on treatment including: financial strains, time limitations, and culture. She states further that persons with a history of trauma also tend to avoid treatment because it requires them to discuss difficult experiences they would prefer to forget.

Financially, the Applicant states he is the primary wage earner for his family. He explains that he and his spouse arrange their schedules so their son can be at home with a parent except for three days a week when he is in childcare. The spouse expresses concern that without the Applicant's help financially she will not be able to support herself, her son, or pay for household bills, including childcare or car payments and insurance. She asserts she is fearful that separation will result in the loss of her employment because she does not have leave to care for her son if he is sick and she will not be able to meet all of her parenting and employment responsibilities while relying on public transportation. She states that she worries she will not be able to pay her debts or continue attending school for nursing. She concludes further that she does not believe she can find a better job because she only has a high school diploma and does not know a trade or have a skillset. The spouse also asserts that the family will not be able to afford their current housing without the Applicant and she is concerned about having to move to a neighborhood that is less safe. She states she will be unable to continue helping other family members and will not receive help from friends or family because they lack funds, transportation, and cannot speak English.

His spouse also expresses fear for the Applicant's wellbeing in Haiti. She states that she would not be able to help the Applicant financially while he was in Haiti and that their family there would only be able to help him for a short time, given their financial situations. In addition, the spouse explains that she fears the Applicant could be a target for crime because he will be perceived as wealthy after living in the United States for so many years. She states that given the conditions in Haiti and the family's financial situation, they could be separated indefinitely and this would be extremely detrimental to their relationship and her son. The Applicant asserts further that the poor conditions in Haiti are well documented, mentioning that there is a current Department of State Travel Warning for the country, Haitian nationals are designated for Temporary Protected Status (TPS), U.S. government employees receive danger pay while being stationed there, and Peace Corps volunteers were withdrawn from the country for security reasons. In this regard, the current Department of State Travel Advisory recommends individuals reconsider travel to Haiti due to crime and civil unrest. The Advisory states that violent crime, protests, and road blockages are common. In addition, U.S. Embassy personnel are restricted in their daily activities because of safety concerns.

We find the Applicant has shown his spouse will suffer extreme hardship as a result of separation because of the emotional and financial difficulties his departure will bring. A psychologist found the spouse is suffering from depression and anxiety, with suicidal ideations. The evaluation also indicated that the spouse's history of past trauma makes her vulnerable to the adverse effects of loss and separation and at a risk for more depression and emotional difficulties. In addition, the record supports a finding that the Applicant is the primary wage earner in the family and a loss of his

income would create financial hardship. U.S. Individual Income Tax Returns from 2016 and 2015 show the Applicant is the primary income earner for the family, which includes his spouse and his son. In 2016, the Applicant and his spouse jointly earned approximately \$60,000, with the Applicant earning \$40,000 and his spouse earning \$20,000. Thus, the Applicant earns approximately 67% of the household income. These tax returns and their supporting documentation show further that the Applicant received medical and dental insurance through his employer; sick leave and vacation days; and was enrolled in a retirement plan. In contrast, the record does not indicate his spouse received any benefits from her employer. The tax returns also support the spouse's statements concerning the couple's college enrollment, in that it shows they paid college tuition during those years.

With respect to relocation, the spouse states she has significant family ties to the United States in her son, parents, and three siblings. She also asserts that she left Haiti over 11 years ago as a high school student and has never resided there as an adult. She expresses concern over not being able to complete her nursing degree and her son losing opportunities for a good education. She adds that in Haiti, the quality of education is low, there is no access to water or sanitation systems, half of Haiti's population over 15 is illiterate, job opportunities and training programs are nonexistent; health care is only for those who can afford it, disease and food shortages are rampant; and there are no employment opportunities. In regards to these conditions, the Applicant provides that he is concerned for potential psychological issues that may result from living in and around extreme poverty. The Applicant submits country reports regarding violence against women and child exploitation in Haiti, as well as generalized country reports from international organizations.

The Department of State Travel Advisory as well as documentation submitted concerning country conditions in Haiti, indicate that Haiti suffers from high rates of extreme poverty, violent crime, and political instability. However, these conditions alone do not establish extreme hardship upon relocation. The record establishes that there are additional factors in the Applicant's spouse's life that when considered together with these conditions, rise to the level of extreme hardship. Specifically, the spouse does not have an education above a high school diploma and currently works in a low-skill job. Similarly, the Applicant is employed as an assistant front desk manager at a hotel. Given the country conditions as described in reports, it is not likely that the Applicant and his spouse will be able to find employment to support themselves and their child upon relocation. Furthermore, the spouse's young age when she traveled to the United States and the fact that she never lived in Haiti would enhance difficulties upon return. Finally, the record also shows the spouse has been attending college, in an attempt to gain more education in, what she asserts, is a nursing program. If she relocates to Haiti she will no longer be able to pursue this degree at her school. In sum, given the country conditions in Haiti, the spouse's level of education, length of residence in the United States, age when she arrived in the United States, and her responsibilities to her young son, we find that relocation to Haiti would also cause extreme hardship to the Applicant's spouse.

The evidence, considered both individually and cumulatively, establishes that the Applicant's spouse would experience extreme hardship if the Applicant is denied admission. In addition, the balancing of the positive equities in this case against the negative factors warrants the favorable exercise of our

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discretion. Accordingly, we withdraw the Director's decision, as the waiver application merits approval.

**ORDER:** The appeal is sustained.

Cite as *Matter of J-J-B-*, D# 1519373 (AAO June 29, 2018)