



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

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

MATTER OF M-L-G-

DATE: AUG. 31, 2016

APPEAL OF SAN FRANCISCO, CALIFORNIA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Switzerland, seeks a waiver of inadmissibility for unlawful presence. See Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 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 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, San Francisco, California, denied the application. The Director concluded that the Applicant had not established extreme hardship to a qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in finding that the Applicant did not establish extreme hardship to a qualifying relative.

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 unlawful presence. 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, 8 U.S.C. § 1182(a)(9)(B)(v), 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 issue on appeal is whether the Applicant has established extreme hardship to a qualifying relative. The Applicant does not contest the finding of inadmissibility for unlawful presence, a determination supported by the record.<sup>1</sup> The claimed hardship to the Applicant’s spouse consists of financial, emotional, and psychological hardships.

The evidence in the record, considered cumulatively, establishes that the Applicant’s spouse would experience extreme hardship. In addition, the record reflects that the Applicant is eligible for a waiver as a matter of discretion.

### A. Hardship

The Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives, in this case the Applicant’s spouse. With the Form I-601,

---

<sup>1</sup> The record reflects that the Applicant entered the United States under the Visa Waiver Program on May 28, 2001; departed the United States on April 8, 2008; entered the United States under the Visa Waiver Program on April 19, 2008; departed the United States on August 12, 2009; and entered the United States under the Visa Waiver Program on September 4, 2009. She accrued unlawful presence from August 26, 2001 until April 8, 2008, and from July 8, 2008 until August 12, 2009. She is therefore inadmissible under section 212(a)(9)(B)(i) of the Act for accruing one year or more of unlawful presence and seeking admission within ten years of her last departure from the United States.

the Applicant submitted a psychological evaluation for her and her spouse, a medical letter, photographs, statements from the Applicant and her spouse, financial records, supporting statements, and information on Switzerland. On appeal, the Applicant submits a brief and a therapist's letter.

The Applicant claims on appeal that her spouse suffers from severe clinical depression, her condition is worsening, and she has to take medication for her condition. She also claims that since learning that her spouse could be denied admission, her spouse has developed anxiety symptoms including an eye twitch and aching jaw from teeth-grinding. She also states her spouse's mother was an alcoholic and her spouse is self-medicating with alcohol. She claims that her spouse's job is extremely demanding and that she is a great support for her. The Applicant's spouse states that she would be devastated if the Applicant could not remain in the United States; she details her history of verbal abuse from her mother and subsequent overeating and excessive drinking; and she details her current overeating, excessive drinking, difficulty sleeping and eye twitches after the Applicant's case was denied. She also states that she wants to start a family with the Applicant.

With regard to psychological hardship, the record contains a psychological assessment of the Applicant's spouse. The psychological assessment discusses the Applicant's spouse's family history of depression and alcoholism and the psychological bond the Applicant and her spouse feel. The report diagnoses the Applicant's spouse with Major Depression, severe without psychotic features, and Generalized Anxiety Disorder. The evaluation mentions that she has anhedonia, sleep disturbance, fatigue, an eye twitch, aching jaw, and issues with alcohol.

The record also includes a letter from her licensed clinical psychologist. The psychologist states that the Applicant's spouse has been receiving therapy since 2011, she has been seeing her on a regular basis, her mother suffered from alcoholism and depression, and she suffers from major depressive disorder and generalized anxiety. The Applicant's spouse's nurse practitioner states that she is under her care and she is taking Paxil for her anxiety.

In regard to financial hardship, the record includes an employer letter for the Applicant's spouse which states that she is working part-time and will soon be working full-time. However, her salary is not clear from the letter.

The record reflects that the Applicant's spouse is experiencing significant emotional and psychological hardship. She is experiencing numerous symptoms, is taking medication, and has a unique history which adds to her hardship. When combined with the normal results of hardship upon removal which include the loss of the Applicant's income, we find that the Applicant has demonstrated extreme hardship to a qualifying relative.

#### B. Discretion

We will 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 grounds 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 unfavorable factors in this case include the Applicant's periods of unlawful presence. The favorable factors include the extreme hardship her spouse would suffer if the waiver application is denied, her good moral character as evidenced by numerous letters of support, and the absence of a criminal record. Upon review, the positive factors in this case outweigh the negative 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.

**ORDER:** The appeal is sustained.

Cite as *Matter of M-L-G-*, ID# 16885 (AAO Aug. 31, 2016)