



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

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

MATTER OF M-H-L-

DATE: MAY 10, 2016

MOTION OF HONOLULU, HAWAII, FIELD OFFICE DECISION

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

The Applicant, a native and citizen of South Korea, seeks a waiver of inadmissibility for unlawful presence and for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), and section 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 to lawful permanent resident (LPR) status 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, Honolulu, Hawaii, denied the Form I-601. The Director concluded that the Applicant was inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of her last departure from the country, and under section 212(a)(6)(C)(i) for fraud or misrepresentation, specifically for using fraudulent information to procure the B1/B2 visa she used to enter the country in 2001. The Director then determined that the Applicant had not established that denial of admission would result in extreme hardship to her spouse, the only qualifying relative.

On appeal, we concluded that, although the Applicant had established her spouse would suffer extreme hardship by relocating to South Korea, the record evidence did not show he would experience extreme hardship from separation, and thus did not establish that refusal of admission would result in extreme hardship to a qualifying relative.

The matter is now before us on motion to reopen and reconsider. In the motion, the Applicant submits additional evidence and claims that the Director erred in not finding that her spouse's hardship would be extreme.

We will grant the motion to reopen.

I. LAW

The Applicant is seeking to adjust to LPR status and has been found inadmissible for unlawful presence, specifically, having remained in the United States after her authorized stay expired in

February 2002 until her departure on December 29, 2008. Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), provides, in pertinent parts:

(i) In General

Any alien (other than an alien lawfully admitted for permanent residence) who—

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) 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 such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of Unlawful Presence

For purposes of this paragraph an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General 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 for

an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The Applicant has also been found inadmissible for fraud or misrepresentation, specifically using fraudulent information to procure the B1/B2 visa she used to enter the United States in 2001. Section 212(a)(6)(C)(i) of the Act states:

Any alien 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 this Act is inadmissible.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides, in pertinent part:

(1) The [Secretary of Homeland Security] may, in the discretion of the [Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the [Secretary of Homeland Security] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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 only issue presented on motion is whether the Applicant’s spouse would experience extreme hardship if the waiver is denied, whether he remained in the United States without her or accompanied her to South Korea. The Applicant does not contest the findings of inadmissibility for unlawful presence and for fraud or misrepresentation. The Applicant’s spouse claims that he would have no choice but to move overseas to reside with the Applicant despite the hardship involved, as it would represent less of a burden than living separately from her. We previously found on appeal that relocating overseas to reside with his spouse would impose extreme hardship on her qualifying relative. The claimed hardship to the Applicant’s spouse from separation consists primarily of loss of income and the emotional hardships of separation.

In support of these hardship claims, the Applicant previously submitted evidence including, but not limited to: the parties’ statements and supportive statements, financial information, medical records

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and a psychological evaluation, travel documents, and photographs. On motion, the Applicant submits additional statements from herself, her daughter, and her spouse; updated medical information; and school records.

The record evidence, considered individually and cumulatively, establishes that the Applicant's spouse would experience hardship beyond those problems normally associated with family separation if the Applicant is unable to remain in the United States. We further conclude that the Applicant merits a waiver as a matter of discretion.

A. Waiver

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.

The Applicant claims that if her spouse remains in the United States without her, he will suffer emotional and financial hardship. As to the financial hardship, the Applicant states that her spouse will be unable to sustain the economic burden of supporting two households. She claims to be an artist and art instructor who left South Korea in 2001, within months of being divorced, without any significant work or earnings history. She asserts that lack of employment history or contacts, coupled with the social stigma of divorce, will make it virtually impossible to find work in a country from which she has been absent for 15 years. We note that evidence the Applicant would have been 28 years old upon arriving in the United States and had given birth to her daughter at the age of [REDACTED] supports claims about her limited opportunity to work before leaving South Korea.<sup>1</sup>

The Applicant and her spouse claim that he is retired and living on about \$5,000 in monthly pension income and withdrawals from retirement savings. A 2012 joint tax return substantiates that most of the couple's income is derived from his California state employee pension. The Applicant's spouse estimates that by withdrawing from \$10,000 to \$30,000 per year from savings, his cash flow is able to meet monthly expenses of \$5,000 to \$7,000. There is evidence the Applicant's spouse undertook a residential mortgage obligation of \$449,000 in 2011 on which he pays nearly \$2,500 per month. Besides a January 2015 hospital bill approaching \$8,000 for emergency room (ER) services, there is documentation of bank account activity indicating that the balance of the monthly expenses claimed is not unreasonable. The record reflects that he is the sole provider for his stepdaughter and the Applicant. He asserts he will be unable to support two households due to age- and health-related limitations on his earning capacity. Medical records confirm that the Applicant's spouse is [REDACTED] years old and suffers from hypertension, that unconsciousness related to his high blood pressure was the reason for his ER visit, and that he is taking medication to control this condition.

Regarding emotional hardship, the Applicant states she and her spouse met in spring 2010 and married in [REDACTED] 2011. Photographs in the record show the Applicant, her spouse, and her

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<sup>1</sup> The Applicant's G-325A, Biographic Information Form, indicates she worked from May 1999 to June 2001, but there is no documentation of this claim.

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daughter together, and the support letters of neighbors and friends attest to the closeness of the family's relationship. The Applicant states that they have not been separated since they married, and the Applicant's spouse states he would be devastated were they to be separated. The clinical psychologist who has treated him since September 2014 reports that symptoms of anxiety, insomnia, fatigue, irritability, lack of concentration and motivation, appetite problems, and excessive alcohol consumption support a diagnosis of major depression stemming from the fear the Applicant would be deported. The qualifying relative's treating physician states that stress over the Applicant's immigration problems has worsened her spouse's hypertension, for which he is receiving daily medication, and hospital records confirm his account of having been transported by ambulance to the hospital after the Applicant found him unconscious at home due to "accelerated hypertension." We note, too, that support letters confirm the Applicant's spouse has formed a strong bond with the Applicant's now [REDACTED]-year-old daughter. Therefore, whether his stepdaughter accompanies her mother to South Korea or remains here without her to pursue her dream of becoming a doctor, her stepfather will likely experience his daughter's hardship of either giving up her mother or her dream as an additional stress factor.

For all these reasons, the cumulative effect of the hardships the Applicant's spouse will experience due to the Applicant's inadmissibility rises to the level of extreme. In particular, the Applicant has shown that the combined impact of financial considerations and emotional stressors, coupled with the qualifying relative's history of accelerated hypertension, can have serious adverse consequences on the qualifying relative's health. We conclude based on the evidence provided that, were her spouse to remain in the United States without the Applicant due to her inadmissibility, he would suffer hardship beyond those problems normally associated with family separation.

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. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). We must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf 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). In evaluating whether to favorably exercise discretion,

the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported.

service in this country'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 the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*Id.* at 301 (citations omitted). We must also consider "[t]he underlying significance of the adverse and favorable factors." *Id.* at 302. For example, we assess the "quality" of relationships to family, and "the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed]." *Id.* (citation omitted).

The favorable factors in this matter are the extreme hardships the Applicant's spouse will face if the Applicant were to reside in South Korea, regardless of whether he accompanied her or remained in the United States; the Applicant's lack of any criminal record; the couple's strong U.S. ties, including a daughter in high school; and evidence of the Applicant's good character. The unfavorable factors in this matter are the Applicant's procurement of a visa by fraud or misrepresentation and unlawful presence in the United States.

Although the Applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and 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. Accordingly, we grant the motion to reopen and find that the motion to reconsider is unnecessary and therefore moot.

**ORDER:** The motion to reopen is granted, and the appeal is sustained.

Cite as *Matter of M-H-L-*, ID# 16276 (AAO May 10, 2016)