



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

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

In Re: 22338300

Date: AUG. 31, 2022

Appeal of Phoenix, Arizona Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks to adjust status to that of a lawful permanent resident and requests a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The Director of the Phoenix, Arizona Field Office denied the application, finding first that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact (not disclosing his prior marriage during visa and adjustment of status proceedings); and second, that he provided insufficient evidence to establish his U.S. citizen spouse (the only qualifying relative) would experience extreme hardship if he is denied admission into the United States, as required for section 212(i) of the Act waiver of inadmissibility purposes.

On appeal, the Applicant does not contest his inadmissibility under section 212(a)(6)(C)(i) of the Act. Instead, he submits additional evidence and claims that the record sufficiently demonstrates his spouse would experience extreme hardship if he were denied admission into the country, and that he merits a favorable exercise of discretion.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Any noncitizen 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. 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. Section 212(i) of the Act.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). We recognize that some degree of hardship to qualifying relatives is present in most cases;

however, to be considered “extreme,” the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were the “common result of deportation” and did not alone constitute extreme hardship.) In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994). In addition to demonstrating the requisite extreme hardship, the inadmissible foreign national must also show that U.S. Citizenship and Immigration Services should favorably exercise discretion and grant the waiver.

II. ANALYSIS

The primary issue on appeal is whether the Applicant has sufficiently demonstrated that his U.S. citizen spouse will experience extreme hardship if he is denied admission into the country. If this is demonstrated, a second issue is whether the Applicant has shown that a favorable exercise of discretion is warranted in his case.

The Director determined that the cumulative evidence in the record did not sufficiently demonstrate that the Applicant’s spouse would experience extreme hardship upon separation or relocation to Mexico, or that a favorable exercise of discretion was warranted in his case. On appeal, the Applicant asserts that he has sufficiently shown his spouse would experience extreme financial, medical, and emotional hardship if he is denied admission into the country; and also, that he merits a favorable exercise of discretion.

Upon review of the totality of the evidence (including the additional documentation submitted on appeal), we conclude that the record is still insufficient to establish the Applicant’s extreme hardship claims.

An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant, and 2) if the qualifying relative relocates overseas with the applicant. Demonstrating extreme hardship under both scenarios may not be required if an applicant’s evidence establishes that only one of these scenarios would result from the denial of the waiver. An applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the Applicant, or would remain in the United States, if the applicant is denied admission. ⁹ *USCIS Policy Manual* B.4(B), <https://www.uscis.gov/policy-manual>. Here, the Applicant has not submitted a statement from his spouse indicating whether she intends to remain in the United States or relocate to Mexico (the Applicant’s native country) if the waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

1. Separation

The Applicant and his spouse assert in statements that they have been married for over ten years and have a close and supportive relationship, and that the spouse relies on him for financial, medical, and emotional support. They indicate that the Applicant is the primary financial provider in their

household, and that his spouse will be unable to pay for their two houses, three cars, and living expenses without the Applicant's financial contributions. They claim that the spouse also takes medication for diabetes, high cholesterol, and high blood pressure, and they fear she will be unable to afford the medication without the Applicant's financial support. They assert further that the Applicant takes his spouse to her doctor appointments, and they express concern that the stress of separation would make the spouse's medical conditions worse. They also state that separation from the Applicant will affect the spouse's emotional well-being, and that she currently feels overwhelmed and worried, and has difficulty sleeping and being happy due to her concerns about his immigration status.

To support these claims, the record contains a self-prepared list of monthly expenses; employment and income tax return information, and home and vehicle related documents; insurance, mortgage, and bank statements; medical and utility bills; and a psychological evaluation.¹

Overall, the financial evidence does not provide a clear picture of the family's financial situation. Although the evidence supports claims that the couple purchased two homes and three vehicles, and that the Applicant earns more money than the spouse, it also reflects that the spouse has a full-time job that provides medical health insurance coverage; and claims that the spouse would be unable to afford her medication without his assistance have not been established. Although the Applicant provides bank statements, he has not clarified how this evidence reflects financial hardship. Moreover, it is not clear who lives in the couple's second home, whether they receive rental income for it, or if the spouse would need to keep the second home or be unable to afford payments on the homes without the Applicant's financial assistance. Her need for three vehicles, or her inability to keep them without the Applicant's financial assistance, has similarly not been demonstrated.

In addition, there are no medical reports in the record to corroborate the spouse's medical ailment claims; and the record lacks an explanation from a medical professional about the treatment needs or severity of the claimed conditions, their effect on the spouse's daily life, or that the Applicant's presence is necessary for her to function normally.

Psychological evaluation evidence also does not corroborate claims that the Applicant's spouse would experience emotional or medical hardship which exceeds that usually expected upon separation. The evaluation reflects that the Applicant's spouse has experienced heightened levels of anxiety and distress due to the Applicant's immigration problems; that she experiences trouble sleeping, and feels overwhelmed, sad, and worried at the thought of being separated from him; and that she has taken medication for her anxiety for over a year in order to keep from being distracted at work. The evaluator diagnosed the spouse with Unspecified Anxiety Disorder and Major Depressive Disorder, Moderate, and recommends spouse continue taking anxiety medication and also that she receives counseling. The evaluation also does not address the severity of the spouse's conditions, and the level at which her daily life and routines would be affected upon separation. We recognize that some degree of anxiety and depression exists in most cases in which an individual is denied admission into the country. The psychological evaluation evidence in the present case does not demonstrate, however, that the

¹ The record also contains many letters from friends and family members; however, these attest to the Applicant's good character, and not to hardship his spouse would experience. In addition, country conditions information for Mexico is general, and the Applicant does not explain how it pertains to hardship his spouse would experience upon separation.

emotional symptoms that the Applicant's spouse would experience upon separation would be beyond the emotional hardship common to inadmissibility and removal.

In conclusion, the evidence in the record is insufficient to establish that the claimed financial, medical, and emotional hardships that the Applicant's spouse would experience, when considered individually and cumulatively, would rise to the level of extreme hardship due to separation from the Applicant.

2. Relocation

The Applicant must establish that denial of his waiver application would result in extreme hardship to his qualifying relative upon both separation and relocation. Because he has not established extreme hardship to his spouse in the event of separation, the Applicant has not met this requirement.

III. CONCLUSION

The Applicant has not demonstrated extreme hardship to a qualifying relative if he is denied admission. Consequently, he has not established eligibility for a waiver of inadmissibility under section 212(i) of the Act and no purpose would be served in discussing whether he merits such a waiver as a matter of discretion.

ORDER: The appeal is dismissed.