



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

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

In Re: 21712305

Date: JULY 19, 2022

Appeal of Queens, New York Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Queens, New York Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish the requisite extreme hardship to his spouse, the only qualifying relative in the case, and that the positive factors did not outweigh the significant negative factors in the case. The matter is now before us on appeal. Upon *de novo* review, we will dismiss 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, 8 U.S.C. § 1182(a)(6)(C)(i). This ground of 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. 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. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). 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) (citations omitted). An applicant may show extreme hardship in two scenarios: 1) if the qualifying relatives remain in the United States separated from the applicant and 2) if the qualifying relatives relocate overseas with the applicant. *See 9 USCIS Policy Manual B.4(B)*, <https://www.uscis.gov/policymanual>. Demonstrating extreme hardship under both of

these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. *See id.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002)).

If the applicant demonstrates the existence of the required extreme hardship to a qualifying relative(s), then they must also show that USCIS should favorably exercise its discretion to grant the waiver. Section 212(i) of the Act. In these proceedings, it is the applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Director's decision summarizes the facts surrounding the Applicant's inadmissibility, which we incorporate here and which the Applicant does not contest on appeal. Briefly, the record shows that the Applicant entered the United States in 2005 using a fraudulent passport and visa. In 2006, an Immigration Judge ordered the Applicant removed, a decision upheld by the Board of Immigration Appeals in 2008. The Applicant did not depart the United States as ordered and in 2009, he married his spouse who gave birth to their son in 2010. The couple divorced in 2014 and then re-married in 2016. According to affidavits from both the Applicant as well as his spouse, if the Applicant is not permitted to remain in the United States, relocating to China is not an option.

The Director denied the waiver application. Among other things, the Director discussed the Applicant's spouse's medical conditions (*i.e.*, iron deficiency anemia, hyperthyroidism, and gynecological issues), a psychiatric evaluation, and the assertion that it would be cost prohibitive to visit the Applicant in China. The Director noted, however, that the Applicant's spouse is employed and has visited China several times in the previous years. In addition, the Director found that after the couple's son was born in the United States, he spent the first six years of his life in China separated from both parents. The Director found that the Applicant's equities, including his marriage, family, and employment, were acquired after he had been ordered removed and thus, were entitled to less weight. Furthermore, the Director found that the Applicant's use of fraudulent travel documents, disregard for the orders issued by the Immigration Judge and Board of Immigration Appeals, unlawful presence in the United States, and employment without authorization showed a complete disregard for the laws of the United States. The Director therefore concluded that the Applicant had not established extreme hardship to his spouse, as required, and that he did not demonstrate that a favorable exercise of discretion was warranted.

On appeal, the Applicant reiterates that his spouse has various health issues, suffers from Major Depressive Disorder and generalized anxiety disorder, and needs the Applicant to continue supporting her emotionally and financially. He asserts that it would be extremely difficult, demanding, and challenging for her to be a single parent, particularly considering her mental and physical health conditions. He contends that her income is very low and that she would be unable to afford frequent trips to China. Furthermore, the Applicant argues that he merits a favorable exercise of discretion considering he has lived in the United States for more than 16 years, has no criminal history, has not

made any subsequent unlawful entries into the United States, has appeared for all of his immigration interviews and hearings, and is the beneficiary of an approved Form I-130 relative petition.¹

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) (“we join eight of our sister circuits in ruling that the Board [of Immigration Appeals] need not write at length merely to repeat the IJ’s [Immigration Judge’s] findings of fact and his reasons for denying the requested relief, but, rather, having given individualized consideration to a particular case, may simply state that it affirms the IJ’s decision for the reasons set forth in that decision.”). Although we acknowledge that the Applicant’s spouse has some physical and mental health issues, the record does not show that they have affected her ability to work or carry out other activities, or that she requires the Applicant’s assistance as a result. There is also no indication the couple’s child has any special needs. Even considering all of the evidence in its totality, the record is insufficient to show that the hardship faced by the Applicant’s spouse would rise beyond the common results of removal or inadmissibility if she remains in the United States without the Applicant.² Because the Applicant has not demonstrated extreme hardship to a qualifying relative if he is denied admission, we need not consider whether he merits a waiver in the exercise of discretion and, therefore, reserve the issue.³ The waiver application will remain denied.

ORDER: The appeal is dismissed.

¹ Counsel erroneously claims in his appeal brief that the Applicant was paroled into the United States on [redacted] 2003, referencing the Applicant’s Form I-94, Departure Record. Rather, the Form I-94 shows the Applicant was granted parole on [redacted] 2005, “pending section 240 removal proceedings,” after he had been served with a Notice to Appear. The Applicant, who was represented by counsel during his removal proceedings, admitted to the factual allegations specified in the Notice to Appear, including that he presented a passport bearing another individual’s name and fraudulently obtained a B1-B2 visa in order to be admitted into the United States. The Applicant does not contest his inadmissibility on appeal, a finding supported by the record.

² Because the Applicant and his spouse attested that relocation is not an option, we evaluate the record for hardship during separation only.

³ Our reservation of this issue is not a stipulation that the Applicant overcame this alternate ground of denial and should not be construed as such. Rather, there is no constructive purpose to addressing it because it cannot change the outcome of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015).