



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

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

In Re: 06842744

DATE: JUNE 3, 2020

Appeal of New York, New York Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Guatemala, seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for committing fraud or misrepresentation.

The Director of the New York, New York Field Office denied the application, concluding the record did not establish her only qualifying relative, her U.S. citizen spouse, would experience extreme hardship because of her continued inadmissibility.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Upon *de novo* review, we will remand the matter for the entry of a new decision.

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. 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. *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).

In addition to demonstrating the required extreme hardship under section 212(i) of the Act, the foreign national must also show that U.S. Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver.

II. ANALYSIS

The issues on appeal are whether the Applicant is inadmissible for fraud or misrepresentation and whether she has established extreme hardship to her spouse. We find that the record establishes that she is inadmissible for fraud or misrepresentation. In addition, the Applicant's spouse would experience extreme hardship due to her continued inadmissibility. Our decision is based on a review of the record, which includes, but is not limited to, statements from the Applicant and her spouse, a psycho-emotional assessment, and medical records.

A. Inadmissibility Under Section 212(a)(6)(C)(i) of the Act

The Applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for willfully committing fraud or misrepresentation. Specifically, the Applicant claimed she was married on her April 2009 B1/B2 nonimmigrant visitor visa application when she was actually single. On appeal, the Applicant asserts that she was married at the time of her visa application, but the relevant government authorities in Guatemala have no record of her marriage. She claims that the National Registry of Persons in Guatemala lost or destroyed the record of her marriage. However, she has provided no other acceptable forms of evidence on appeal to establish that she was married at the time of her visa application. Therefore, we will not disturb the Director's finding that she is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully committing fraud or misrepresentation.

B. Extreme Hardship

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 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. The 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/policymanual>. In the present case, the Applicant's spouse states that he would be unable to leave the United States and live in Guatemala. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship upon separation from her.

The Applicant claims that her spouse would experience financial, medical, psychological, and emotional hardship upon separation. The Applicant states that her spouse is the financial provider for their family and she stays at home with their children, ages 2 and 4. She asserts that he would have to decrease his work hours to care for their children or pay for child care, and he would have to financially support her in Guatemala. The record shows that the Applicant's spouse is an elevator mechanic for the [REDACTED]. The record includes the Applicant's spouse's 2017 tax return

showing income of about \$69,000, and credit card and bank statements showing balances of about \$4,000 and \$2,000.

The Applicant states that her spouse has medical conditions, he takes daily medications and must monitor his food intake, and she helps provide a balanced diet. She claims that he has had diabetes attacks resulting in the inability to walk and blurry vision, and she assists him in these situations. Her spouse's medical records reflects that he has diabetes, high cholesterol, and tachycardia (fast heart rate), and he takes several medications.

The Applicant's spouse was evaluated by a mental health counselor who diagnosed him with an Unspecified Depressive Disorder and Adjustment Disorder with Mixed Anxiety and Depressed Mood, and states that the absence of the Applicant would aggravate his anxious-depressive symptoms. The mental health counselor also mentions the difficulties that children experience without their mother.

The record reflects that the Applicant's spouse would lose the Applicant's support in caring for their two young children. He would have child care expenses and expenses in supporting her in Guatemala. In reviewing his current financial situation, the record indicates these additional expenses would be a source of financial hardship. Furthermore, he would experience some hardship without the day-to-day benefit she provides in regard to his medical conditions. Lastly, the record shows that the Applicant's spouse would experience psychological and emotional hardship upon separation from the Applicant and in raising their children without their mother. Based on the totality of the evidence, we find that the Applicant's spouse would experience extreme hardship upon separation from the Applicant.

As the Director did not make a discretionary finding, we will remand the matter for determination of whether the Applicant also merits a waiver in the exercise of discretion.

ORDER: The matter is remanded for the entry of a new decision consistent with the foregoing analysis.