



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

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

In Re: 8631610

Date: JULY 6, 2020

Appeal of Atlanta, Georgia Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant 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 Atlanta, Georgia Field Office denied the application, concluding that the record did not establish extreme hardship to a qualifying relative if the Applicant is denied admission.

On appeal, the Applicant submits additional evidence and asserts that the Director erred in finding that the Applicant had not established extreme hardship to his U.S. citizen spouse.

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, as explained below, we will remand the matter to the Director for the entry of a new decision.

The Applicant filed his waiver application in 2012 due to inadmissibility for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act, a ground of inadmissibility he does not contest. He seeks a waiver of this inadmissibility under section 212(i) of the Act.¹ The Director denied the application in December 2013 and the Applicant filed a timely appeal in January 2014. On appeal, the Applicant submits additional evidence and asserts that he has established extreme hardship to his U.S. citizen spouse. After the waiver's denial, the Applicant applied for and obtained U-1

¹ For purposes of obtaining a waiver pursuant to section 212(i) of the Act, for fraud or willful misrepresentation, the applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. 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 an applicant's evidence establishes 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>.

nonimmigrant status. The appeal was subsequently forwarded to our office in 2019 after he was granted that status.

Considering that six years have passed since the appeal's filing date, we find it appropriate to remand the matter for the Director to request updated evidence, as appropriate, and to determine in the first instance if the Applicant has established extreme hardship to a qualifying relative. If the Director finds the Applicant has established extreme hardship to his U.S. citizen spouse, then the Director must consider whether the Applicant merits a favorable exercise of discretion.

ORDER: The decision of the Director is withdrawn.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