



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

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

In Re: 26925791

Date: AUG. 18, 2023

Appeal of San Diego, California Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of El Salvador residing in the United States, has applied for adjustment of status to that of a lawful permanent resident (LPR). The Applicant has filed Form I601, Application for Waiver of Grounds of Inadmissibility (waiver application), seeking a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for having sought admission to the United States through fraud or willful misrepresentation. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would cause extreme hardship to a qualifying relative, or qualifying relatives.

The Director of the San Diego, California Field Office denied the application, concluding that the record did not establish that the Applicant's U.S. citizen spouse would experience extreme hardship if the Applicant were refused admission to the United States, as required for purposes of a waiver under section 212(i) of the Act. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

A noncitizen who, by fraud or willful misrepresentation, seeks or has sought to procure a visa, documentation, or admission into the United States, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

A noncitizen may request a waiver of this ground of inadmissibility available under section 212(i) of the Act, which requires them to show that refusal of admission would result in extreme hardship to a U.S. citizen or LPR spouse or parent.

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).

If the noncitizen demonstrates the requisite extreme hardship, they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

II. ANALYSIS

The Director found the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act for having committed fraud or material misrepresentation to obtain admission to the United States. The Applicant does not contest this ground of inadmissibility; therefore, he must demonstrate eligibility for a waiver of this ground of inadmissibility by showing, among other things, extreme hardship to his U.S. citizen spouse. Section 212(i) of the Act.

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. Establishing 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. *See generally* 9 USCIS Policy Manual B.4(B), <https://www.uscis.gov/policy-manual> (explaining, as policy guidance, determinations of extreme hardship upon separation and relocation). In this case, the Applicant’s spouse has indicated that she will relocate to El Salvador with the Applicant. The Applicant must therefore establish that if he is denied admission his spouse would experience extreme hardship upon relocation.

The Director denied the waiver application, finding that the Applicant had not established extreme hardship to his U.S. citizen spouse. On appeal, the Applicant argues that his spouse has shown health-related, financial, and familial hardship, and has also demonstrated an elevated risk of harm due to the security situation in El Salvador. He contends that these factors are sufficient to rise to the level of extreme hardship when considered cumulatively.

In support of the waiver application and appeal, the Applicant submits two letters from his spouse’s doctor. Her physician indicates that she began receiving medical care for depression and anxiety beginning in 2013. The first letter also indicates that the Applicant’s spouse was recovering from a recent surgery. The Applicant provides additional medical records showing that his spouse underwent an operation to her hand in 2018 and to her ankle in 2019. The Applicant also provides two physical therapy letters. The first, signed approximately one month after the ankle surgery, indicates that his spouse had continued pain and swelling. The second, from 2021, notes that she was evaluated and treated for elbow pain.

The Applicant's spouse signed an affidavit where she highlights her history of anxiety and depression. In this affidavit, she details some of the symptoms she has experienced. She also explains the family's financial situation. In addition, she points to her lengthy residence in the United States and the presence of family members in the United States. Finally, she contends that the security situation in El Salvador would cause a risk to her personal safety in the event of relocation.

Finally, the Applicant has provided information on the family's finances by submitting pay stubs, health insurance cards, and information on their vehicles. He also submits reports detailing the country conditions in El Salvador.

With respect to his spouse's physical health, we take into consideration that the Applicant's spouse has undergone surgery to her ankle and her hand. However, the Applicant has provided insufficient evidence to establish that his spouse would suffer hardship upon relocation because of these surgeries. She has not indicated that she is reliant on him for management of her physical health or that her health issues continue to present obstacles in her ability to support herself. Counsel for the Applicant indicates that the Applicant's spouse requires "ongoing, indefinite treatment by medical qualified medical professionals" to recover from these surgeries. However, assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. The provided medical records do not indicate whether the Applicant's spouse requires ongoing care, and if so, the nature of the care being provided. The declarations submitted by his spouse likewise do not indicate the existence of ongoing medical treatment following these surgeries that would be disrupted in the event of relocation.

Turning to his spouse's mental health, we note that she has received treatment for anxiety and depression since 2013. She also contends that she has experienced difficulties including memory issues, fatigue, and negative emotional symptoms such as irritability and restlessness. However, the Applicant's spouse did not address or provide documentation to show the impact or severity of these symptoms, whether these symptoms are currently managed, or the type of treatment she receives. She also has not asserted that the type of care she receives would be unavailable to her upon relocation to El Salvador. While her mental health diagnoses likely cause the Applicant's spouse some level of hardship, the Applicant has not provided sufficient evidence to demonstrate by a preponderance of the evidence that she would suffer extreme hardship upon relocation. See *Matter of Chawathe*, 25 I&N Dec. at 375-76 (stating that the burden of proof to establish eligibility rests with the applicant).

The financial considerations raised by the Applicant are insufficient to rise to the level of extreme hardship. The Applicant's spouse contends that he would be limited to low-paying agricultural work, but they have not explained why his work options would be so restricted. Similarly, she indicates that she would be unable to find "a decent job" and they would be barely able to cover their costs of living. She also indicates that their reduced income would leave them unable to satisfy their debts and cause a lowering of their credit score. However, the Applicant has not provided details regarding any outstanding debts or payments they are currently making. Ultimately, while the Applicant may be correct that they would have a lower standard of living and reduced income in El Salvador, these forms

of financial detriment are considered a common consequence of removal. *Matter of Pilch*, 21 I&N at 630-31.¹

Finally, we turn to the Applicant's contention that his spouse would suffer extreme hardship upon relocation because of the security situation in El Salvador. First, we have taken into consideration that El Salvador is currently in a state of exception intended to curb the activities of gangs. *See, e.g.*, U.S. Department of State, El Salvador Travel Advisory, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/el-salvador-travel-advisory.html> (last visited August 16, 2023). The Applicant's spouse has highlighted the elevated levels of criminality in El Salvador. However, the Applicant has not provided details of their intended living situation sufficient to demonstrate that their lives would be at risk or that another form of extreme hardship would follow upon relocation.

III. CONCLUSION

After examining all evidence provided with the waiver application and appeal and all hardship factors in the aggregate, the Applicant has not demonstrated by a preponderance of the evidence that his spouse would suffer extreme hardship upon relocation if the Applicant were refused admission. 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 section 212(i) waiver in the exercise of discretion.

ORDER: The appeal is dismissed.

¹ The Applicant's spouse contends that she will be separated from her family because her economic resources will not permit her to travel and visit them. While this is a possibility, separation from family is also a common consequence of deportation.