



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

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

In Re: 28537125

Date: DEC. 1, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant, a citizen of China, has applied for an immigrant visa to enter the United States as 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), for committing fraud when obtaining a nonimmigrant visa. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Nebraska Service Center denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the record did not establish that refusal of admission would result in extreme hardship to the Applicant's only qualifying relative, his U.S. citizen spouse. The Director further found that the waiver is not warranted as a matter of discretion. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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, 8 U.S.C. § 1182(a)(6)(C)(i). USCIS may waive 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 noncitizen. Section 212(i) of the Act. If the noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

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 relative remains in the United States separated from the applicant and 2) if the qualifying relative relocates overseas with the applicant. See 9 USCIS Policy Manual B.4(B), <https://www.uscis.gov/policymanual> (providing guidance on the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both 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)). 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 *id.* In the present case, the record is unclear whether the Applicant’s spouse would remain in the United States or relocate to China if the Applicant’s waiver application is denied. The Applicant must, therefore, establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

Hardship to the applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002). See 9 USCIS Policy Manual, Section D, *Effect of Hardship Experienced by a Person who is not a Qualifying Relative*, <https://www.uscis.gov/policy-manual/volume-9-part-b-chapter-4#S-D>.

If the noncitizen demonstrates the requisite extreme hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the noncitizen to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez*, 21 I&N 296, 299 (BIA 1996). We must balance the adverse factors evidencing an applicant’s undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted).

Finally, we have held that, “truth is to be determined not by the quantity of evidence alone but by its quality.” *Matter of Chawathe*, 25 I&N Dec. at 376. That decision explains that, pursuant to the preponderance of the evidence standard, we “must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Id.*

The Applicant, a citizen of China, does not contest the finding of inadmissibility for misrepresentation of material facts, which is established in the record. The relevant issue on appeal is whether the Applicant has established extreme hardship to his spouse, as required to qualify for a waiver of inadmissibility under section 212(i) of the Act and, if so, whether he merits the waiver as a matter of discretion.

In support of his waiver request, the Applicant submitted statements from himself, his spouse and father-in-law, medical documentation regarding his wife's Graves' disease and hepatitis B, and evidence of his wife's pregnancy. In response to a Request for Evidence, the Applicant supplemented the record with March and October 2022 psychiatric evaluations for his wife, information about Graves' disease, country conditions documentation for China, an updated personal statement and a brief by a person who is not an authorized representative. The psychiatric evaluations stated that the Applicant's wife was diagnosed with adjustment disorder with mixed anxiety and depressed mood resulting from the visa refusal. Although the Request for Evidence sought specific financial documents to support a claim that the Applicant's spouse would experience financial hardship, the Applicant did not furnish the requested financial documentation.

The Director denied the waiver on grounds of not meeting the burden to establish extreme hardship. The Director stated the Applicant did not address the part of the Request for Evidence addressing whether the Applicant's wife's medical conditions were not treatable in China and also found that the emotional impact of prolonged absence, while adverse, is "no greater than one would expect from a prolonged absence of a loved one due to inadmissibility and thus does not rise to the level of extreme hardship." The Director also denied the waiver application based on discretion after balancing the favorable and unfavorable discretionary factors.

On appeal, the Applicant submits:

- Birth certificates for his and his spouse's two United States citizen children, born [] 2015 and [] 2019
- A pastor's letter of support
- A new personal statement expressing remorse for his misrepresentation
- A March 2023 Early Intervention Process: Evaluation Report for his younger child indicating that the child "is demonstrating a delay in communication development and is eligible for early intervention services," and
- An updated psychiatric evaluation by the same psychiatrist who issued two prior assessments stating the Applicant's wife has adjustment disorder with mixed anxiety and depressed mood together with the psychiatrist's credentials.

Upon de novo review, we note that the Director has not been afforded the opportunity to consider the March 2023 Early Intervention Process: Evaluation Report for the Applicant's younger child that shows that he has developmental delays, or the letter from the Applicant's pastor indicating that this circumstance will create challenges for the Applicant's spouse. We note that hardship to this child may be considered insofar as it results in hardship to the Applicant's wife, a qualifying relative. Matter of Gonzalez Recinas at 471. The Director has also not had the opportunity to examine the updated psychiatric evaluation of the Applicant's wife.

In a brief submitted by the Applicant, he makes general claims regarding poor human rights conditions in China and challenges one might experience if returning there from the United States. However, he has neither explained how they support that his wife would experience specific hardships upon return nor explained how the country conditions in China impact the Applicant's wife's medical or emotional hardship upon separation or relocation. We again note that, as the Applicant's wife has not indicated

whether she would return to China or remain in the United States, the Applicant must show that his wife would endure extreme hardship upon relocation to China or separation from the Applicant should she remain in the United States.

Based on the foregoing, we will remand the matter to the Director to consider hardship shown by the new evidence, together with other hardship factors in the aggregate.

Should the Director find that the Applicant has established extreme hardship to his spouse, the Director shall reevaluate whether the Applicant warrants a favorable exercise of discretion, taking into consideration such extreme hardship to the Applicant's spouse, evidence of developmental delay of the Applicant's younger child, the Applicant's expressed remorse for his misrepresentation, and other discretionary factors. See 9 USCIS Policy Manual 5.A, <https://www.uscis.gov/policymanual> (providing a non-exhaustive list of factors that may be relevant to the discretionary analysis).

ORDER: The decision of the Director of the Nebraska Service Center is withdrawn. The matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision.