



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

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

In Re: 28487249

Date: NOV. 2, 2023

Appeal of Sacramento, California 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).

The Director of the Sacramento, California Field Office denied the application. The Director determined that the Applicant had not established that his U.S. citizen mother, the only qualifying relative, would suffer extreme hardship upon his removal from the United States. The Director also found that the Applicant did not merit a favorable exercise of discretion. On appeal, the Applicant submits a brief and contends he has established that his mother will experience extreme hardship if he is denied admission. He further maintains that he merits a favorable exercise of discretion.

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 remand the matter to the Director for further proceedings.

A 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. 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 mother or parent of the noncitizen. 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).

If the noncitizen demonstrates the existence of the required hardship, then he or she 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 the 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). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the foreign national and his or her family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

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, in this case, his U.S. citizen mother. 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>. The record establishes that the Applicant's mother intends to remain in the United States if the Applicant is denied admission. The Applicant must therefore establish that if he is denied admission, his mother would experience extreme hardship upon separation.

The Applicant's mother, currently 89 years old, submits a declaration detailing the emotional, medical, and financial hardships she would experience if the Applicant is unable to remain in the United States with her. She contends that the Applicant helps support her financially as her income is insufficient to cover all personal expenses, provides her with companionship each day while her other son works, and takes her to her medical appointments since her other son's schedule does not allow him to do so. She also details that as a result of ongoing medical conditions, her limitations include back pain, the inability to walk long distances or drive, and the need for a cane, and consequently, she needs the Applicant to remain in the United States because her other children have busy work schedules and cannot tend to her daily needs. The Applicant's mother also asserts that if the Applicant were to return to Mexico, she would not be able to visit him because there is a lot of violence in Mexico and she fears for her safety; she explains that the last time she was in Mexico she was robbed on the street. She also

states that she would be constantly worried about his safety in Mexico. She concludes that long-term separation from her son would cause her great emotional hardship given her age and the number of years residing close to the Applicant.

In support, the record contains medical documentation pertaining to the Applicant's mother, financial documentation pertaining to the Applicant and his mother, and articles addressing the problematic country conditions in Mexico. We note that the Applicant has submitted evidence that the U.S. Department of State has urged U.S. citizens to reconsider travel to [REDACTED] Mexico, the Applicant's home state, due to crime and kidnapping. The Applicant has also submitted a statement from his brother detailing the critical role the Applicant plays in their mother's daily care and support; he also contends that an extended separation would cause their mother emotional pain and hardship. The Applicant's cousin also provides a statement detailing the hardships the Applicant's mother would experience if the Applicant were to relocate abroad because she is unable to drive herself to medical appointments or take care of her basis needs on her own. She explains that when her aunt was diagnosed with cancer, the Applicant played a crucial role in her daily care and support.

We find that the evidence submitted by the Applicant on appeal, when considered alongside previously submitted evidence, adequately addresses the insufficiencies identified by the Director to establish that the Applicant's elderly mother will experience extreme hardship if she is separated from the Applicant due to his inadmissibility. The Applicant has thus established extreme hardship to a qualifying relative for the purpose of a waiver for fraud or willful misrepresentation.

The Director concluded that the Applicant's criminal history was a negative factor that rendered the Applicant ineligible for a favorable exercise of discretion.¹ The Applicant's showing of extreme hardship to his mother upon separation presents a positive factor in the Applicant's case.² In light of this new positive factor, we will remand the matter to the Director for a determination of whether the Applicant now merits a favorable exercise of discretion.

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

¹ The Director did not detail any positive factors with respect to discretion in the decision to deny the waiver application.

² Further, additional positive factors to consider with respect to the Applicant's case include hardship to the Applicant and his family; the Applicant's community ties in the United States; support letters on his behalf; his payment of taxes; the approved Form I-130, Petition for Alien Relative, on the Applicant's behalf; and the Applicant's long-term gainful employment. Negative factors to consider include the Applicant's 2014 driving under the influence conviction, as noted by the Director, the Applicant's fraud or misrepresentation, the Applicant's periods of unauthorized presence and employment in the United States, and the lack of documentation in the record that establishes the Applicant's remorse or regret for his immigration violations and criminal conviction.