



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

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

In Re: 28982755

Date: NOV. 14, 2023

Appeal of Washington, DC Field Office Decision

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

The Applicant, a citizen of Ghana currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR) and seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The Director of the Washington, DC Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the while the Applicant did establish extreme hardship to a qualifying relative, he did not merit a favorable exercise of discretion. On appeal, the Applicant asserts that the Director did not give proper weight to the positive factors and that a favorable exercise of discretion is warranted. 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.

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). This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in in extreme hardship to the U.S. citizen or LPR spouse or parent. If the Applicant demonstrates the existence of the required extreme hardship to a qualifying relative, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

If the noncitizen demonstrates the existence of the required 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-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing an applicant's undesirability as an LPR 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 positive factors 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 noncitizen and their 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.*

The Director determined the Applicant was inadmissible for fraud or willful misrepresentation. Specifically, the Director found that the Applicant misrepresented material facts when he falsified his income to obtain a visa, presented a fraudulent visa at entry and claimed a nonimmigrant intent, indicated his future spouse was his sister to be released from detention, and affirmed inconsistencies during the asylum hearing. The Applicant appealed the denial of the waiver, and we dismissed the Applicant's appeal determining he had not demonstrated extreme hardship to his spouse. We later remanded a motion to the Director for consideration of new evidence. The Director determined that the Applicant had demonstrated extreme hardship to his U.S. citizen spouse but found that he did not merit a favorable grant of discretion. The Director concluded that the Applicant's misrepresentations, and his perpetuation of these misrepresentations, were adverse discretionary factors outweighing the positive factors.

On appeal, the Applicant contends the Director erred in not considering all the positive factors and that he warrants a favorable exercise of discretion. The Applicant admits that he misrepresented his employment when he applied for a visa, presented a fraudulent visa, and stated that his future wife was his sister to be released from detention. He asserts that the Director erred in determining that he continued to perpetuate false statements during a previous immigration hearing, and notes that his testimony indicates he conceded the misrepresentations. Upon review, we acknowledge that the Applicant conceded his misrepresentations, and we withdraw that portion of the Director's decision. Nonetheless, the Director's error does not change the outcome of the matter because the Applicant repeatedly misrepresented himself to USCIS while seeking admission to the United States.

In weighing the positive and adverse factors, the Director determined the Applicant had established his wife would suffer extreme hardship if the waiver were denied. We consider this a positive factor and accord it significant weight in our discretionary analysis. We further acknowledge the positive factors of the Applicant's lengthy employment, family ties to his US. citizen wife and children, his involvement in church, his expression of regret for the prior misrepresentations, and the decade of residence in the United States. However, when weighed against the significant and repeated adverse factors of the Applicant's willful misrepresentations when applying for a visa, presenting a fraudulent visa to enter the United States, and misrepresenting his wife as his sister, the totality of the record is not sufficient to overcome the Director's determination that a favorable exercise of discretion is not warranted. The waiver application will remain denied.

ORDER: The appeal is dismissed.