



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

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

In Re: 29156332

Date: NOV. 27, 2023

Appeal of San Bernardino, California Field Office Decision

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

The Applicant, a native and citizen of Mexico currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be “admissible” or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. *See* 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 San Bernardino, California Field Office denied the application, concluding that the record did not establish that the Applicant’s only qualifying relative, his LPR spouse, would experience extreme hardship because of his continued inadmissibility. 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.

I. LAW

Any foreign national 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 waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the foreign national. If the foreign national demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

II. ANALYSIS

The Applicant sought entry to the United States on December 16, 1987, by presenting a fraudulent Illinois birth certificate. Therefore, the Director correctly found him inadmissible under section 212(a)(6)(C)(i) of the Act due to fraud or misrepresentation. The Applicant does not contest the Director's inadmissibility finding on appeal.

The Applicant seeks a waiver of this inadmissibility under section 212(i) of the Act and asserts that he established extreme hardship to his spouse. 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. *See 9 USCIS Policy Manual B 4(B)*, <https://www.uscis.gov/policymanual> (providing guidance on establishing hardship in the event of relocation or separation). In the present case, the record does not include a statement from the Applicant's spouse indicating that she will remain in the United States or relocate to Mexico if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship under both scenarios.

The Applicant submits a brief and material evidence on appeal, including an updated psychological evaluation of his spouse, updated medical letters for his spouse and her mother, and a statement from his daughter. The Applicant also provides previously submitted evidence. Considering the new evidence submitted on appeal relating to extreme hardship to the Applicant's spouse, we find it appropriate to remand the matter for the Director to determine in the first instance if the totality of the circumstances establishes extreme hardship. If the Director finds that the Applicant has established extreme hardship to his spouse, then the Director must consider whether the Applicant 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.