



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

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

In Re: 27395025

Date: Oct. 2, 2023

Appeal of Mount Laurel, New Jersey Field Office Decision

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

The Applicant, a citizen of China, 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), 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 Mount Laurel, New Jersey Field Office 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 and 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, which, if adverse, shall be certified to us for review.

I. LAW

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).

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 foreign national 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.*

II. ANALYSIS

The Applicant 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 her spouse, as required to qualify for a waiver of inadmissibility under section 212(i) of the Act and, if so, whether she merits the waiver as a matter of discretion.

In support of her waiver request, the Applicant submitted her spouse's letters describing emotional, psychological, and financial hardship he would suffer if the Applicant was removed to China, a psychological assessment diagnosing the Applicant's spouse with an unspecified type of depression and a medication prescription for the depression, medical documents from medical providers in Philadelphia regarding the Applicant's spouse's U.S. citizen parents, extensive documentation of developmental delays pertaining to the 7-year-old son of the Applicant and her husband, and a 2019 deed for the home of the Applicant and her husband. In summary, the Applicant's spouse details his relationship with the Applicant, his love for her, his dependence on her raising their special needs son, managing their home and their restaurant and the hardships he would face if the Applicant's waiver were not approved which include potentially losing the business, home, and severe regression of their already developmentally-delayed son. The educational assessment placed the son's "Early Achievement Index" at the lowest second percentile. The son is in the first percentile (the lowest percentile) for "general information," the ninth percentile in math, reading, and writing, and the fifth percentile for "spoken language."

The Director denied the waiver on grounds of not meeting the burden to establish extreme hardship and, after weighing the favorable and unfavorable factors, also denied the waiver application as a matter of discretion. In denying the waiver application based on not meeting the burden of establishing extreme hardship, the Director stated, "[the Applicant's son's] educational documentation and the medical documentation for [the Applicant's in-laws] are irrelevant in this case, as they are not considered qualifying relatives by statute." The Director also denied the waiver application based on discretion after balancing the favorable and unfavorable discretionary factors.

The Applicant challenges the Director's assertion that the extensive documentation regarding her son is irrelevant. She also challenges the discretionary finding saying she believes the Director believes "that the mistake [she] made with a false document is so serious no problem [the Applicant's spouse] could have or does have is serious enough" to meet the Applicant's burden to demonstrate extreme hardship on her spouse.

A. Extreme Hardship

Hardship to the Applicant or non-qualifying relatives can be considered 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>. Here, the record contains extensive documentation of the Applicant's son's developmental delay, including being lowest second percentile in the Early Achievement Index overall and the Applicant tied the son's special needs to the impact on her spouse's hardship. The Applicant's spouse explained his reliance on the Applicant as the primary caretaker in connection with their son's special needs and, thus, the Applicant demonstrated how the indirect hardship on the non-qualifying relative son will impact the hardship on the qualifying relative spouse if the Applicant is removed. Only the indirect hardship that is established may be considered.¹

¹ In his statement, the Applicant's spouse asserted a fear of losing his home and business. However, he did not explain why he would lose his home or business if the Applicant is removed, and it is unclear whether he intended to represent

B. Discretionary Factors

In denying the waiver based on discretion, the Director considered three favorable factors: U.S. citizen spouse, U.S. citizen child, and approximately 23 years of residence in the United States. The Director indicated there were four unfavorable factors: (1) misrepresenting identity and age (posing as a minor), (2) use of counterfeit identity documents and immigration documents, (3) multiple illegal entries into the U.S., and (4) “frequent misrepresentation of material facts in immigration proceedings.” It appears that the Director’s fourth unfavorable factor encompasses unfavorable factors already covered in unfavorable factors 1, 2, and 3.

Upon de novo review of the record, the Director did not fully consider certain favorable factors including ownership of property, business ties, hardship on the Applicant’s nonqualifying relatives and employer, country conditions in China, and the absence of other significant negatives (no criminal record). 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). For example, the Director considered the Applicant’s family ties to her spouse and son, but the decision did not note the presence of extended family such as the Applicant’s in-laws whose medical records were provided. The Applicant and her spouse jointly own a home for which a deed is in the record, and they own a business, namely a Chinese restaurant. Although the existence of a U.S. citizen child was viewed as a favorable discretionary factor, the hardship on this nonqualifying U.S. citizen was not considered as a favorable factor. Likewise, hardship on the Applicant’s employer is a relevant discretionary factor that was not considered. The passage of time since her exclusion was similarly not considered.

The Applicant stated on appeal that she had to depart China due to her “history with the Chinese government”, and that if she had remained she “would [have been] killed 100% for sure.” Country conditions in China is a relevant factor when weighing discretion. The Applicant has not described the specific circumstances that caused her to depart China, or explained whether they continue to pose a risk to her or her family. However, as the Applicant has raised conditions in China, the Director should consider the viability of the Applicant’s spouse and child visiting or relocating there. Regarding the non-viability of the Applicant’s spouse and their child visiting the Applicant in China, we take administrative notice of the current 2022 U.S Department of State Country Report for Human Rights for China (Country Report),² <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/china/>, and the current U.S. State Department China Travel Advisory (Travel Advisory), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/china-travel-advisory.html>, which notes that there are some reports of Chinese authorities arbitrarily imposing exit bans on U.S. citizens and that visiting U.S. citizens risk prolonged interrogations and extended detention without due process of law.

that he would relocate to China with her. Regarding the Applicant’s spouse’s parent’s medical documentation that supported the waiver application, neither the Applicant nor her spouse explained the relevance of these records or how the in-laws’ medical situation impacts the hardship of her spouse. Thus, the Applicant has not met the burden of establishing that hardship to her in-laws would impact her spouse.

² See *Matter of R-R*, 20 I&N Dec. 547, 551 (BIA 1992) (“It is well established that administrative agencies and the court may take judicial (or administrative) notice of commonly known facts”) (citation omitted).

III. CONCLUSION

The Director did not consider the impact of hardship to non-qualifying relatives on the Applicant's spouse. As such, we will remand the matter for further consideration of the record, including claims submitted on appeal, and entry of a new decision.

If the Director finds that the Applicant meets her burden of demonstrating extreme hardship on her spouse, then the Director should weigh all the favorable and unfavorable discretionary factors, which would include the nature and extent of extreme hardship. All factors must be considered in making a discretionary determination. See 1 USCIS Policy Manual E.8, <https://www.uscis.gov/policymanual> ("The act of exercising discretion involves weighing both positive and negative factors and considering the totality of the circumstances in the case before making a decision"). Although the applicant's violations of the immigration law cannot be condoned, the Director must consider the totality of the circumstances in deciding whether the positive factors in this case outweigh the negative factors.

ORDER: The decision of the Director of the Mount Laurel, New Jersey Field Office 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, which, if adverse, shall be certified to us for review.³

³ We have the authority to withdraw a decision and remand the case for further action, with an order that it be certified back to us if the new decision is adverse to the affected party. USCIS Policy Memorandum PM-602-0087, Certification of Decisions to the Administrative Appeals Office (AAO) 4 (July 2, 2013), <https://www.uscis.gov/sites/default/files/document/memos/Certification%20of%20Decisions%20.pdf> (visited August 3, 2023), Adjudicator's Field Manual 3.5(c), 10.18(a)(3), <https://www.uscis.gov/ilink>. This order is not meant to compel approval of the remanded case, but is designed to preserve the affected party's ability to seek appellate review without payment of a second appeal fee. Id.