



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

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

In Re: 20596535

Date: OCT. 10, 2023

Appeal of Denver, Colorado 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 Denver, Colorado Field Office denied the application. The Director found that the Applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation. The Director also determined that the Applicant had not established that her U.S. citizen spouse, the only qualifying relative, would suffer extreme hardship upon her removal from the United States. On appeal, counsel for the Applicant contests the Director's finding of inadmissibility. She also contends she has established that her spouse will experience extreme hardship if she is denied admission.

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 review, we will remand the matter to the Director for further proceedings.

## **I. LAW**

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 spouse 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).

## II. ANALYSIS

On appeal, the Applicant contests the Director’s finding that she is inadmissible under section 212(a)(6)(C)(i) of the Act. The Applicant also asserts that she has established that her spouse will experience extreme hardship if she is denied admission and that she merits a favorable exercise of discretion. The issues on appeal therefore are whether the Applicant is inadmissible under section 212(a)(6)(C)(i) and whether she has established eligibility for the benefit sought.

### A. Inadmissibility Under Section 212(a)(6)(C)(i) of the Act

The record establishes that the Applicant misrepresented her marital status when she applied for a nonimmigrant visa in December 2016. Specifically, she claimed to be married and living with her spouse at the time, when in fact she was divorced and had not lived with her spouse since 2014. On appeal, the Applicant asserts that her misrepresentation regarding her marital status on her nonimmigrant visa application was not willful or intentional. She contends that an agency completed the application and she was not aware that the agency had misrepresented her marital status. She further maintains that the misrepresentation regarding her marital status “did not tend to influence the reviewing officer any differently than if accurate information would have been provided” on the nonimmigrant visa application.

“[T]he test of whether concealments or misrepresentations are “material” is whether they can be shown by clear, unequivocal, and convincing evidence to have been predictably capable of affecting, *i.e.*, to have had a natural tendency to affect, the Immigration and Naturalization Service’s decisions.” *Kungys v. United States*, 485 U.S. 759, 760 (1988). The Board of Immigration Appeals has held that a misrepresentation is material if either the foreign national is excludable on the true facts, or the misrepresentation tends to shut off a line of inquiry which is relevant to the foreign national’s admissibility and that would predictably have disclosed other facts relevant to his or her eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-*, 27 I&N Dec. 105 (BIA 2017).

The record establishes that the Applicant misrepresented her marital status on her nonimmigrant visa application and that is the basis of inadmissibility. By claiming to be married and living with her spouse on the nonimmigrant visa application, when in fact she was divorced, the Applicant led the consular officer to believe that she had significant family ties in Colombia. Her misrepresentation shut off a line of inquiry which was relevant to her eligibility for the nonimmigrant visa. The Applicant had the duty and the responsibility to review the nonimmigrant visa application prior to submission, irrespective of who she had retained to process the application on her behalf, to ensure its accuracy. As such, the Applicant is inadmissible for fraud or misrepresentation with respect to her December 2016 nonimmigrant visa application.

## B. Hardship

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, her U.S. citizen 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. 9 *USCIS Policy Manual* B 4(B), <https://www.uscis.gov/policymanual>. The record establishes that the Applicant's spouse intends to remain in the United States. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship upon separation.

On appeal, the Applicant's spouse submits a declaration detailing the emotional, medical, and financial hardships he would experience if the Applicant is unable to remain in the United States with him. He contends that he is in his late 50's and has been diagnosed with numerous medical conditions, including hypertension, sleep apnea, hypertensive urgency, arthritis, and panic attacks, and those conditions would be exacerbated were the Applicant to reside abroad because she plays a critical role in ensuring that he is taking care of himself. The Applicant's spouse also details that he has been diagnosed with depression and anxiety and has received therapy as a result, but were his spouse to relocate abroad, his mental health conditions would worsen. The Applicant's spouse also asserts that when his spouse had work authorization, she helped him with his business but without work authorization, she is unable to work legally and their income has suffered. The Applicant's spouse also notes that due to the problematic country conditions in Colombia, the Applicant will not be able to financially support herself were she to relocate abroad, thereby exacerbating their financial situation because he will have to support two households, one in Colombia and one in the United States. The Applicant's spouse also contends that he will not be able to afford to travel to Colombia regularly.

In support, the record contains medical and mental health documentation pertaining to the Applicant's spouse, evidence of the Applicant's spouse's military service in the United States, financial documentation pertaining to the Applicant and her spouse, and articles addressing the problematic country conditions in Colombia. We note that the Applicant has submitted evidence that the U.S. Department of State has urged U.S. citizens to reconsider travel to Colombia due to violent crime and organized criminal activities.

Most notably, we acknowledge receipt of documentation establishing that in March 2022, after the instant appeal was submitted, the Applicant's spouse was diagnosed with prostate cancer. The Applicant contends that she needs to remain in the United States to help care for him as he undergoes necessary treatment.

We find that the new 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 spouse will experience extreme hardship if he is separated from the Applicant due to her inadmissibility. The Applicant has thus established extreme hardship to a qualifying relative for purposes of a waiver of the above-stated ground of inadmissibility.

As the Director did not previously consider whether the Applicant has established that she merits a favorable exercise of discretion, we find it appropriate to remand the record for the Director to determine in the first instance whether the Applicant merits a favorable exercise of discretion pursuant to section 212(i) of the Act.

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