



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

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

In Re: 27861239

Date: OCT. 17, 2023

Appeal of Columbus, Ohio Field Office Decision

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

The Applicant, a native and citizen of Cambodia 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 Columbus, Ohio Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant did not establish that her qualifying relative, her U.S. citizen spouse, would suffer extreme hardship upon her removal. 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.

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. To establish eligibility for a waiver of this inadmissibility the noncitizen must demonstrate, as a threshold requirement, that denial of admission will result in extreme hardship to their U.S. citizen or LPR spouse, or parent. 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

The Director found the Applicant inadmissible for fraud or misrepresentation because she entered the United States in 2000 with a photo altered passport and visa. The Applicant does not contest the finding of inadmissibility. The issue on appeal is whether the Applicant has established extreme hardship to her U.S. citizen spouse and if so, whether she merits a favorable exercise of discretion. On Appeal, the Applicant asserts that her spouse’s medical conditions, financial responsibilities, stress of caring for their son with autism, and caring for his elderly mother would cause him to suffer extreme hardship.

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 Gonzalez 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 his affidavit the Applicant’s spouse states that he intends to remain in the United States and thus the Applicant must establish extreme hardship upon separation from her qualifying relative. The Applicant’s spouse explains that the Applicant is the caregiver for their two U.S. citizen children and his elderly mother. He further explains that he relies on the Applicant for his own emotional support and for the primary care for their older son who has autism. Regarding hardship, the record contains affidavits from the Applicant and her spouse, a letter of support from their teenage daughter, a 2017 medical evaluation for their son, medical and military service records for the spouse, school records for their two children, including an Individualized Education Program (IEP) for their son, financial documents, and Cambodian country condition documents.

The medical records for the Applicant’s spouse indicate he suffers from hypertension, tinnitus, obstructive sleep apnea, high cholesterol, joint pain, and asthma. Although the spouse states that the Applicant is helpful in his care and will put his CPAP on him if he falls asleep without it, the medical records do not indicate he requires the Applicant’s involvement in his daily treatment. The record lacks evidence to indicate that his medical conditions will be exacerbated if the Applicant returns to Cambodia as the Applicant asserts on appeal.

Regarding emotional support, the Applicant and her spouse claim that he relies on his her for emotional support and to care for their two children and his aging mother. We acknowledge these claims, but note that the record lacks sufficiently detailed evidence of the emotional impact that the spouse would experience if the Applicant returns to Cambodia. The spouse states that his wife is his first love and that they have been married for 18 years. Loss of companionship and emotional support are expected results of separation from a loved one and the affidavits do not indicate that the Applicant's spouse would experience emotional hardships that rise to the level of extreme hardship.

As noted above, the couple's older child is not a qualifying relative for hardship purposes. The hardship to the Applicant's spouse is considered as it relates to caring for their 18-year old son with autism. The spouse indicates that the Applicant is good at calming their son and that without the Applicant it will put a lot of stress on him. School records indicate the Applicant's son is performing below grade level in most academic areas, and that he has an IEP and receives direct instruction in school. The 2019 IEP notes that the Applicant's son was dismissed from Occupational Therapy in 2018 and dismissed from Speech Therapy in 2019. We acknowledge the diagnosis of autism and the role the Applicant plays in caring for and calming her son. However, the record does not contain sufficient specificity to explain how the Applicant supports her son and how her absence would create extreme hardship for her spouse, especially when contrasted with reports indicating her son no longer needs certain supports.

The Applicant's spouse indicates he would not be able to care for his mother, who suffers from dementia, without the Applicant's assistance. The evidence regarding the mother's medical condition is contained in the affidavit from the Applicant's spouse stating that his mother has dementia. Without more evidence of the medical condition and the care that she requires, we are not able to assess the impact the Applicant's separation would have on her spouse caring for his mother.

The Applicant asserts that she would not be able to support her family financially in Cambodia. However, the record does not indicate that the Applicant is presently supporting her family. The spouse's declaration indicates the Applicant stayed home to care for their children during the pandemic, and there are no documents indicating current employment. As she did not contribute financially to the family in the past, the claim that she would not be able to provide financial assistance to the family from Cambodia, without more evidence in support, is not sufficient to establish extreme hardship.

Considering the evidence in its totality and in aggregate, the Applicant has not established by a preponderance of the evidence that the health of her spouse, his loss of companionship, the consequence of caring for a son with autism, and the remaining hardship evidence rise above the common results of removal.

III. CONCLUSION

The Applicant did not establish that her spouse would suffer extreme hardship based on separation. As such, we need not consider whether she merits a waiver in the exercise of discretion. The waiver application will remain denied.

ORDER: The appeal is dismissed.