



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

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

In Re: 28336770

Date: OCT. 31, 2023

Appeal of Newark, New Jersey Field Office Decision

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

The Applicant, a native and citizen of India 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 Newark, New Jersey Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding the Applicant failed to meet her burden of establishing eligibility for the benefit sought. 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 United States 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.

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 under section 212(a)(6)(C)(i) of the Act for procuring employment authorization in 2016 by fraud or misrepresentation. The Director outlined the Applicant’s immigration history related to the fraud or misrepresentation, and we hereby incorporate that portion of the Director’s decision by reference. The Applicant does not contest she is inadmissible for fraud or misrepresentation. The Director then listed the evidence submitted by the Applicant in support of her waiver application and relevant caselaw. However, the Director did not discuss the evidence and determine whether the Applicant’s U.S. citizen spouse, a qualifying relative, would experience extreme hardship if the Applicant were refused admission to the United States. Rather, the Director stated, “[a] review of the evidence submitted in support of the application, as well as a thorough analysis of the entire file has been taken into consideration in determining whether or not your application merits a favorable decision. The entire record has been carefully considered, and the positive factors have been balanced against the adverse.” We note the decision does not discuss nor weigh the Applicant’s favorable and unfavorable factors to determine whether she merits a favorable exercise of discretion.¹ The Director concluded by finding the Applicant failed to meet her burden of establishing eligibility for the benefit sought.

Because of these deficiencies, we will return the matter to the Director to evaluate the evidence. If the new decision is adverse, the Director shall explain the specific reasons why the Applicant has not established her spouse would experience extreme hardship, and if she has established extreme hardship, why she does not merit a waiver as a matter 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.

¹ A discretionary determination would only be required if the Applicant first established extreme hardship to her spouse.