



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

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

In Re: 28208901

Date: OCT. 31, 2023

Appeal of San Diego, California Field Office Decision

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

The Applicant, a native and citizen of China 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 Diego, California Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the record did not establish the Applicant’s U.S. citizen spouse, a qualifying relative, would experience extreme hardship because of her continued inadmissibility. The matter is now before us on appeal. 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 fraud or misrepresentation. The Director outlined a series of misrepresentations made by the Applicant regarding her marital history in interviews for derivative asylee, fiancée, and lawful permanent resident status. 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 issue on appeal is whether the Applicant has established extreme hardship to her U.S. citizen spouse, who she married in [REDACTED] 2014. The record establishes that the Applicant’s spouse would experience extreme hardship due to her continued inadmissibility. Our decision is based on a review of the record, which includes, but is not limited to, statements from the Applicant and her spouse, medical records, photographs, financial records, statements in support of the Applicant, and information on conditions in China.

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 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>. In the present case, the Applicant’s spouse states that he would relocate to China if the Applicant’s waiver application were denied. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship upon relocation to China.

On appeal, the Applicant asserts that her spouse would experience extreme hardship in China due to several factors. The Applicant states that her spouse is 77 years old, he was born in the United States, he has never lived abroad, and he is deeply ingrained in American culture. The Applicant mentions that her spouse has a brother and four children with families in the United States that he would be separated from, and it would be difficult to see them from China due to distance and cost of travel. The Applicant’s spouse, who lives in [REDACTED] states that his brother and one of his children live in California, two of his children live in Florida, and one of his children lives in Pennsylvania. He claims that he meets them often. The record includes several photographs of the Applicant’s spouse with his family at various gatherings. The Applicant further claims that Chinese culture is completely different than American culture and he would be unable to learn Mandarin Chinese, which would further his difficulty in living there. The Applicant mentions that [REDACTED] where they would reside, is

located very close to North Korea, and it has practically no Westerners. She contends her spouse would stick out, and he would face discrimination due to anti-American sentiment. The Applicant's spouse states that he visited the Applicant in [REDACTED] in December 2012 for three weeks and in April 2013 for one week. He states that he was the only Caucasian when he visited the Applicant's city and the local Chinese police looked at him with suspicion. Furthermore, he notes that anti-American sentiment is high in China due to the United States accusing China of being the source of coronavirus. The Applicant's spouse, who resides in [REDACTED] mentions that [REDACTED] has below-freezing, long winters which would affect his health, he would be unable to find a job due to his age and the language barrier, and he and the Applicant would have to live with her very elderly parents. The Applicant has submitted yearly weather information for [REDACTED] articles on anti-American issues in China, and a U.S. Department of State Travel Advisory to China which references exit bans and extended detentions of U.S. citizens without due process.

Next, the Applicant references her spouse's medical issues and the inability to afford treatment in China as sources of hardship. The Applicant's spouse's physician states that he has treated the Applicant's spouse since 2013, and his issues have included benign prostatic hyperplasia, incidental cavernoma, heart disease, stable angina, hypertension, high cholesterol, and poorly controlled diabetes with complications of diabetic cataract and neuropathy. His physician lists various medications he is taking and multiple specialists he has been treated by. The Applicant states that her spouse has Medicare insurance which does not cover expenses abroad, and private insurance covering services in China is not affordable. The record includes documentation showing that Medicare does not usually cover care received outside of the United States.

The record reflects that the Applicant's elderly spouse has close family ties in the United States, has spent his entire life in the United States, and does not have ties to China other than the Applicant. In addition, he does not speak Mandarin Chinese, and he would experience difficulty finding employment due to his age and the language barrier. The Applicant's spouse also has medical issues for which he is receiving treatment in the United States, his Medicare would not cover services outside of the United States, and he would be unable to pay for private insurance without being employed in China. We also note the general country conditions as it relates to U.S. citizens and the harsh winter climate as sources of hardship. Based on the totality of the hardship factors presented, we determine that the Applicant's spouse would experience extreme hardship upon relocation to China.

As the Director did not make a discretionary finding, we will remand the matter for determination of whether the Applicant merits a waiver in the 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.