

# USCIS Policy Manual

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## Volume 9 - Waivers

### Part B - Extreme Hardship

#### Chapter 1 - Purpose and Background

##### A. Purpose

This part offers guidance concerning the adjudication of applications for those discretionary waivers of inadmissibility that require applicants to establish that refusal of their admission would result in “extreme hardship” to certain U.S. citizen or lawful permanent resident (LPR) family members.

##### B. Background

Under the Immigration and Nationality Act (INA), <sup>[1]</sup>[See Immigration and Nationality Act, Pub. L. 82-414, 66 Stat. 163 \(June 27, 1952\), as amended.](#) admissibility is generally a requirement for admission to the United States, adjustment of status, and other immigration benefits. <sup>[2]</sup>[See INA 212\(a\) and INA 245\(a\).](#) The grounds that make foreign nationals inadmissible to the United States are generally described in section 212 of the INA.

Several statutory provisions authorize the Secretary of Homeland Security <sup>[3]</sup>[See 6 U.S.C. 271\(b\). See Delegation No. 0150.1, “Delegation to the Bureau of Citizenship and Immigration Services” II, Z \(June 5, 2003\).](#) to grant discretionary waivers of particular grounds of inadmissibility for those who demonstrate that a denial of admission would result in “extreme hardship” to specified U.S. citizen or LPR family members. These specified family members are known as “qualifying relatives.” <sup>[4]</sup>[The classes of individuals who may serve as “qualifying relatives” depends on the specific text of the waiver provision involved. A U.S. citizen or LPR spouse or parent is a qualifying relative for most extreme hardship waivers. For certain other extreme hardship waivers, a U.S. citizen or LPR child, as well as an adult son or daughter, can be the qualifying relative. In the case of a K visa applicant, a U.S. citizen fiancé\(e\) is considered a U.S. citizen “spouse” qualifying relative. See 8 CFR 212.7\(a\) and 22 CFR 41.81\(d\) \(K nonimmigrants\). Finally, under some provisions, discretionary relief may be available upon a showing of extreme hardship to the applicants themselves. These include waivers of inadmissibility under INA 212\(i\)\(1\) \(waiver of fraud-related inadmissibility for Violence Against Women Act \(VAWA\) self-petitioners\), waivers of requirements for removing conditions on LPR status under INA 216\(c\)\(4\)\(A\), cancellation of removal under INA 240A\(b\)\(2\)\(A\)\(v\) adjudicated by the Executive Office for Immigration](#)

[Review, and suspension of removal and cancellation of removal under Section 203 of Nicaraguan Adjustment and Central America Relief Act \(NACARA\), Pub. L. 105-100, 111 Stat. 2160, 2196 \(1997\). See 8 CFR 240.64\(c\) and 8 CFR 1240.64\(c\). This guidance addresses USCIS' adjudication of waiver applications that require a showing of extreme hardship to specified family members, not applications based on extreme hardship to applicants themselves.](#)

Each of these statutory provisions conditions a waiver on both a finding of extreme hardship to one or more qualifying relatives and the favorable exercise of discretion. These waiver applications are adjudicated by USCIS (and in some cases by the Department of Justice's Executive Office for Immigration Review).<sup>[5]</sup> [See 6 U.S.C. 271\(b\). See Delegation No. 0150.1, "Delegation to the Bureau of Citizenship and Immigration Services" II, Z \(June 5, 2003\).](#)

The various statutory waiver provisions specify different categories of qualifying relatives and permit waivers of different inadmissibility grounds. The provisions include:

- [INA 212\(a\)\(9\)\(B\)\(v\)](#) – Provides for waiver of the 3- and 10-year inadmissibility bars for unlawful presence.<sup>[6]</sup> [See INA 212\(a\)\(9\)\(B\)\(i\).](#) Qualifying relatives are limited to applicants' U.S. citizen and LPR spouses and parents.<sup>[7]</sup> [A U.S. citizen fiancé\(e\) is a qualifying relative in the case of a K nonimmigrant applicant. See 8 CFR 212.7\(a\) and 22 CFR 41.81\(d\) \(K nonimmigrants\).](#)
- [INA 212\(h\)\(1\)\(B\)](#)<sup>[8]</sup> [Other provisions of INA 212\(h\) authorize waivers of certain grounds of inadmissibility without an extreme hardship determination. See INA 212\(h\), INA 212\(h\)\(1\)\(A\), and INA 212\(h\)\(1\)\(C\).](#) – Provides for waiver of inadmissibility based on crimes involving moral turpitude, multiple criminal convictions, prostitution and commercialized vice, and certain serious criminal offenses for which the foreign national received immunity from prosecution.<sup>[9]</sup> [See INA 212\(a\)\(2\)\(A\)\(i\), INA 212\(a\)\(2\)\(B\), INA 212\(a\)\(2\)\(D\), and INA 212\(a\)\(2\)\(E\).](#) Also provides a waiver of inadmissibility for a controlled substance violation insofar as the violation relates to a single offense of simple possession of 30 grams or less of marijuana.<sup>[10]</sup> [See INA 212\(a\)\(2\)\(A\)\(ii\).](#) Qualifying relatives are limited to applicants' U.S. citizen and LPR spouses, parents, sons, and daughters.<sup>[11]</sup> [The son or daughter must be related to the applicant in one of the ways specified in INA 101\(b\)\(1\), but he or she does not need to be a "child" \(unmarried and under 21 years of age\). Because the term "son or daughter" is not restricted with respect to age or marital status, it includes children as defined in INA 101\(b\)\(1\) as well as adult or married sons and daughters.](#)
- [INA 212\(i\)\(1\)](#) – Provides for waiver of inadmissibility for certain types of immigration fraud or willful misrepresentations of material fact.<sup>[12]</sup> [See INA 212\(a\)\(6\)\(C\)\(i\).](#) For purposes of this waiver:
  - Qualifying relatives are generally limited to applicants' U.S. citizen and LPR spouses and parents

- But if the applicant is a Violence Against Women Act (VAWA) self-petitioner, USCIS also must consider extreme hardship to the applicant himself or herself, or to a parent or child<sup>[13]</sup>. The term “child” is limited to individuals who are unmarried, under 21 years of age, and related to the applicant in one of the ways specified in INA 101(b)(1). who is a U.S. citizen, LPR, or otherwise a qualified alien.

The factors discussed in this guidance apply to any waiver application in which a foreign national must establish extreme hardship to a qualifying relative.<sup>[14]</sup> Certain types of waivers utilize standards of hardship other than “extreme hardship.” For example, the “exceptional hardship” waiver that applies to the foreign residence requirement for certain exchange visitors under INA 212(e) is a less demanding standard than “extreme hardship.” By contrast, the “exceptional and extremely unusual hardship” standard for non-LPR cancellation of removal is more stringent than the extreme hardship standard under INA 240A(b). See Matter of Monreal-Aguinaga, 23 I&N Dec. 56 (BIA 2001). This guidance specifically applies only to “extreme hardship” determinations. Because the classes of individuals who may serve as qualifying relatives varies among the different waiver provisions, officers should carefully determine which individuals can serve as qualifying relatives under the relevant extreme hardship analysis.

## Footnotes

1.

See Immigration and Nationality Act, Pub. L. 82-414, 66 Stat. 163 (June 27, 1952), as amended.

2.

See INA 212(a) and INA 245(a).

3.

See 6 U.S.C. 271(b). See Delegation No. 0150.1, “Delegation to the Bureau of Citizenship and Immigration Services” II, Z (June 5, 2003).

4.

The classes of individuals who may serve as “qualifying relatives” depends on the specific text of the waiver provision involved. A U.S. citizen or LPR spouse or parent is a qualifying relative for most extreme hardship waivers. For certain other extreme hardship waivers, a U.S. citizen or LPR child, as well as an adult son or daughter, can be the qualifying relative. In the case of a K visa applicant, a U.S. citizen fiancé(e) is considered a U.S. citizen “spouse” qualifying relative. See 8 CFR 212.7(a) and 22 CFR 41.81(d) (K nonimmigrants). Finally, under some provisions, discretionary relief may be available upon a showing of extreme hardship to the applicants themselves. These include waivers of inadmissibility under INA 212(i)(1) (waiver of fraud-related inadmissibility for Violence Against Women Act (VAWA) self-petitioners), waivers of requirements for removing conditions on LPR status under INA 216(c)(4)(A), cancellation of removal under INA 240A(b)(2)(A)(v) adjudicated by the Executive Office for Immigration Review, and suspension of removal and cancellation of removal under Section 203 of Nicaraguan Adjustment and Central America Relief Act (NACARA), Pub. L. 105-100, 111 Stat. 2160, 2196 (1997). See 8 CFR 240.64(c) and 8 CFR 1240.64(c). This guidance addresses USCIS’ adjudication of waiver applications that require a showing of extreme hardship to specified family members, not applications based on extreme hardship to applicants themselves.

5.

See 6 U.S.C. 271(b). See Delegation No. 0150.1, “Delegation to the Bureau of Citizenship and Immigration Services” II, Z (June 5, 2003).

6.

See [INA 212\(a\)\(9\)\(B\)\(i\)](#).

7.

A U.S. citizen fiancé(e) is a qualifying relative in the case of a K nonimmigrant applicant. See [8 CFR 212.7\(a\)](#) and [22 CFR 41.81\(d\)](#) (K nonimmigrants).

8.

Other provisions of [INA 212\(h\)](#) authorize waivers of certain grounds of inadmissibility without an extreme hardship determination. See [INA 212\(h\)](#), [INA 212\(h\)\(1\)\(A\)](#), and [INA 212\(h\)\(1\)\(C\)](#).

9.

See [INA 212\(a\)\(2\)\(A\)\(i\)](#), [INA 212\(a\)\(2\)\(B\)](#), [INA 212\(a\)\(2\)\(D\)](#), and [INA 212\(a\)\(2\)\(E\)](#).

10.

See [INA 212\(a\)\(2\)\(A\)\(ii\)](#).

11.

The son or daughter must be related to the applicant in one of the ways specified in [INA 101\(b\)\(1\)](#), but he or she does not need to be a “child” (unmarried and under 21 years of age). Because the term “son or daughter” is not restricted with respect to age or marital status, it includes children as defined in [INA 101\(b\)\(1\)](#) as well as adult or married sons and daughters.

12.

See [INA 212\(a\)\(6\)\(C\)\(i\)](#).

13.

The term “child” is limited to individuals who are unmarried, under 21 years of age, and related to the applicant in one of the ways specified in [INA 101\(b\)\(1\)](#).

14.

Certain types of waivers utilize standards of hardship other than “extreme hardship.” For example, the “exceptional hardship” waiver that applies to the foreign residence requirement for certain exchange visitors under [INA 212\(e\)](#) is a less demanding standard than “extreme hardship.” By contrast, the “exceptional and extremely unusual hardship” standard for non-LPR cancellation of removal is more stringent than the extreme hardship standard under [INA 240A\(b\)](#). See [Matter of Monreal-Aguinaga](#), 23 I&N Dec. 56 (BIA 2001). This guidance specifically applies only to “extreme hardship” determinations.

## Chapter 2 - Extreme Hardship Policy

### A. Overview

Waivers of inadmissibility generally authorize U.S. immigration authorities to balance competing policy considerations when determining whether a foreign national should be admitted to the United States despite his

or her inadmissibility.

On the one hand, the foreign national has engaged in conduct that Congress considers serious enough to render the individual inadmissible to the United States. On the other hand, Congress specifically authorized waivers of these grounds of inadmissibility for those cases in which the refusal of admission “would result in extreme hardship.” To meet this “extreme hardship” requirement, the applicant must show that refusal of admission would impose more than the usual level of hardship that commonly results from family separation or relocation. Congress clearly intended the waiver to be applied for purposes of family unity and with other humanitarian concerns in mind.<sup>[11]</sup>[For example, see \*Matter of Lopez-Monzon\*, 17 I&N Dec. 280, 281 \(BIA 1979\) \(“The intent of Congress in adding \[the INA 212\(i\) waiver\], which is evident from its language, was to provide for the unification of families, thereby avoiding the hardship of separation.”\).](#)

## B. What is Extreme Hardship

The term “extreme hardship” is not expressly defined in the Immigration and Nationality Act (INA), in Department of Homeland Security (DHS) regulations, or in case law (although DHS regulations and certain Board of Immigration Appeals (BIA) decisions have provided some relevant guidance with respect to what may constitute extreme hardship in certain contexts). As the U.S. Supreme Court recognized in *INS v. Jong Ha Wang*, “[t]hese words are not self-explanatory, and reasonable men could easily differ as to their construction. But the [INA] commits their definition in the first instance to the Attorney General [and the Secretary of Homeland Security] and [their] delegates.”<sup>[21]</sup>[See 450 U.S. 139, 144 \(1981\) \(per curiam\).](#)

Therefore, “[t]he Attorney General [and the Secretary of Homeland Security] and [their] delegates have the authority to construe ‘extreme hardship’ narrowly should they deem it wise to do so.”<sup>[31]</sup>[See \*INS v. Jong Ha Wang\*, 450 U.S. 139, 145 \(1981\) \(per curiam\).](#) Conversely, “[a] restrictive view of extreme hardship is not mandated either by the Supreme Court or by [the BIA] case law.”<sup>[41]</sup>[See \*Matter of Pilch\*, 21 I&N Dec. 627, 630 \(BIA 1996\). See \*Matter of L-O-G-\*, 21 I&N Dec. 413, 418 \(BIA 1996\).](#)

USCIS recognizes that at least some degree of hardship to qualifying relatives exists in most, if not all, cases in which individuals with the requisite relationships are denied admission. Importantly, to be considered “extreme,” the hardship must exceed that which is usual or expected.<sup>[51]</sup>[See 8 CFR 1240.58\(b\) \(hardship must go “beyond that typically associated with deportation”\) \(former suspension of deportation\). The federal courts and the BIA have frequently relied on cases involving the former suspension of deportation statute when interpreting extreme hardship waiver statutes, as these statutes employed the same language. See \*Hassan v. INS\*, 927 F.2d 465, 467 \(9th Cir. 1991\). See \*Matter of Cervantes-Gonzalez\*, 22 I&N Dec. 560, 565 \(BIA 1999\), \*aff’d\*, \*Cervantes-Gonzales v. INS\*, 244 F.3d 1001 \(9th Cir. 2001\).](#) But extreme hardship need not be unique,<sup>[61]</sup>[See \*Matter of L-O-G-\*, 21 I&N Dec. 413, 418 \(BIA 1996\).](#) nor is the standard as demanding as the statutory “exceptional and extremely unusual hardship” standard that is generally applicable to non-lawful permanent resident cancellation of removal.<sup>[71]</sup>[See INA 240A\(b\). See \*Matter of Andazola-Rivas\*, 23 I&N Dec. 319, 322, 324 \(BIA 2002\) \(holding the “exceptional and extremely unusual hardship” standard to be “significantly more burdensome than the ‘extreme hardship’ standard” and intimating that the applicant “might well” have prevailed under the latter standard even though she failed under the former\). See \*Matter of Monreal-Aguinaga\*, 23 I&N Dec. 56, 59-64 \(BIA 2001\) \(same\).](#)

## Footnotes

1.

For example, see [Matter of Lopez-Monzon](#), 17 I&N Dec. 280, 281 (BIA 1979) (“The intent of Congress in adding [the [INA 212\(i\)](#) waiver], which is evident from its language, was to provide for the unification of families, thereby avoiding the hardship of separation.”).

2.

See 450 U.S. 139, 144 (1981) (per curiam).

3.

See *INS v. Jong Ha Wang*, 450 U.S. 139, 145 (1981) (per curiam).

4.

See [Matter of Pilch](#), 21 I&N Dec. 627, 630 (BIA 1996). See [Matter of L-O-G-](#), 21 I&N Dec. 413, 418 (BIA 1996).

5.

See [8 CFR 1240.58\(b\)](#) (hardship must go “beyond that typically associated with deportation”) (former suspension of deportation). The federal courts and the BIA have frequently relied on cases involving the former suspension of deportation statute when interpreting extreme hardship waiver statutes, as these statutes employed the same language. See *Hassan v. INS*, 927 F.2d 465, 467 (9th Cir. 1991). See [Matter of Cervantes-Gonzalez](#), 22 I&N Dec. 560, 565 (BIA 1999), *aff’d*, *Cervantes-Gonzales v. INS*, 244 F.3d 1001 (9th Cir. 2001).

6.

See [Matter of L-O-G-](#), 21 I&N Dec. 413, 418 (BIA 1996).

7.

See [INA 240A\(b\)](#). See [Matter of Andazola-Rivas](#), 23 I&N Dec. 319, 322, 324 (BIA 2002) (holding the “exceptional and extremely unusual hardship” standard to be “significantly more burdensome than the ‘extreme hardship’ standard” and intimating that the applicant “might well” have prevailed under the latter standard even though she failed under the former). See [Matter of Monreal-Aguinaga](#), 23 I&N Dec. 56, 59-64 (BIA 2001) (same).

## Chapter 3 - Adjudicating Extreme Hardship Claims

### A. Overview

In adjudicating a waiver request, the officer must ensure that the applicant meets all of the statutory requirements for the waiver, including the extreme hardship showing. If the applicant is eligible, the officer must then determine whether the applicant warrants a favorable exercise of discretion. In each case, the officer should analyze each part separately.

First, the applicant has the burden of proof to demonstrate by a preponderance of the evidence that he or she satisfies the statutory requirements of the waiver, including extreme hardship.<sup>[1]</sup> [See INA 291 \(providing that burden is on applicant for admission to prove he or she is “not inadmissible” and “entitled to the nonimmigrant \[or\] immigrant . . . status claimed”\).](#) [See Matter of Mendez-Moralez, 21 I&N Dec. 296, 299 \(BIA 1996\) \(holding that applicant for INA 212\(h\)\(1\)\(B\) waiver has burden of showing that favorable exercise of discretion is warranted, “as is true for other discretionary forms of relief”\).](#) [See 8 CFR 212.7\(e\)\(7\) \(provisional INA 212\(a\)\(9\)\(B\)\(v\) waivers\).](#) [See INA 240\(c\)\(4\)\(A\) \(in removal proceedings, the applicant for relief has the burden of proving that he or she is statutorily eligible and merits a favorable exercise of discretion\).](#) The applicant meets the preponderance of the evidence standard if the evidence shows that it is more likely than not that a denial of admission would result in extreme hardship to one or more qualifying relatives.<sup>[2]</sup> [See Matter of Chawathe, 25 I&N Dec. 369, 376 \(AAO 2010\).](#)

The finding of extreme hardship permits, but does not require, a favorable exercise of discretion.<sup>[3]</sup> [See Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 566 \(BIA 1999\), aff’d, Cervantes-Gonzales v. INS, 244 F.3d 1001 \(9th Cir. 2001\).](#) [See Matter of Ngai, 19 I&N Dec. 245 \(BIA 1984\).](#) [See Matter of Shaughnessy, 12 I&N Dec. 810 \(BIA 1968\).](#) Once the officer finds extreme hardship, the officer must then determine whether the applicant has shown that he or she merits a favorable exercise of discretion.<sup>[4]</sup> [See Chapter 7, Discretion \[9 USCIS-PM B.7\].](#)

## B. Adjudicative Steps

The officer should complete the following steps when adjudicating a waiver application that requires a showing of extreme hardship to a qualifying relative.<sup>[5]</sup> [In most cases, there will already have been a finding of inadmissibility, either by the consular officer adjudicating a visa application, or a USCIS officer adjudicating a related application, such as a Form I-485, Application to Register Permanent Residence or Adjust Status. A formal finding of inadmissibility is not required in adjudicating a Form I-601A, Application for Provisional Presence Waiver. The officer should identify all inadmissibility grounds and confirm that the ground\(s\) may be waived. This chart assumes that the inadmissibility grounds have been identified and that a waiver is available.](#)

Adjudication Steps for Waivers Requiring Extreme Hardship to a Qualifying Relative		
Adjudication Step		For More Information
<b>Step 1</b>	Confirm that the waiver provision requires a showing of extreme hardship to a qualifying relative.	See Chapter 1, Purpose and Background [ <a href="#">9 USCIS-PM B.1</a> ]
<b>Step 2</b>	Consistent with the applicable waiver authority, identify each person as to whom the applicant makes a claim of extreme hardship and confirm that the applicant has established the necessary	See Chapter 4, Qualifying Relative [ <a href="#">9 USCIS-PM B.4</a> ]

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	family relationship for the person(s) to be qualifying relatives(s).	
<b>Step 3</b>	<p>Evaluate the present and future hardships that each qualifying relative would experience to determine whether it is more likely than not that an applicant's refusal of admission would result in extreme hardship to the qualifying relative.</p> <p>This includes whether any of the particularly significant factors listed below are present. These particularly significant factors generally exceed the common consequences and often weigh heavily in support of a finding of extreme hardship.</p>	<p>See Chapter 5, Extreme Hardship Considerations and Factors [<a href="#">9 USCIS-PM B.5</a>]</p> <p>See Chapter 6, Extreme Hardship Determinations [<a href="#">9 USCIS-PM B.6</a>]</p>
<b>Step 4</b>	<p>If no single hardship rises to the level of "extreme," then determine whether it is more likely than not that the hardships to the qualifying relatives in the aggregate rise to the level of extreme hardship.</p>	<p>See Chapter 2, Extreme Hardship Policy [<a href="#">9 USCIS-PM B.2</a>]</p> <p>See Chapter 5, Extreme Hardship Considerations and Factors [<a href="#">9 USCIS-PM B.5</a>]</p> <p>See Chapter 6, Extreme Hardship Determinations [<a href="#">9 USCIS-PM B.6</a>]</p>
<b>Step 5</b>	<p>If extreme hardship is <i>not</i> found, deny the application.</p> <p>If extreme hardship <i>is</i> found, determine whether based on the totality of the circumstances of the individual case, the applicant merits a favorable exercise of discretion.</p>	<p>See Chapter 7, Discretion [<a href="#">9 USCIS-PM B.7</a>]</p>

## Footnotes



1.

See [INA 291](#) (providing that burden is on applicant for admission to prove he or she is “not inadmissible” and “entitled to the nonimmigrant [or] immigrant . . . status claimed”). See [Matter of Mendez-Morales](#), 21 I&N Dec. 296, 299 (BIA 1996) (holding that applicant for [INA 212\(h\)\(1\)\(B\)](#) waiver has burden of showing that favorable exercise of discretion is warranted, “as is true for other discretionary forms of relief”). See [8 CFR 212.7\(e\)\(7\)](#) (provisional [INA 212\(a\)\(9\)\(B\)\(v\)](#) waivers). See [INA 240\(c\)\(4\)\(A\)](#) (in removal proceedings, the applicant for relief has the burden of proving that he or she is statutorily eligible and merits a favorable exercise of discretion).

2.

See [Matter of Chawathe](#), 25 I&N Dec. 369, 376 (AAO 2010).

3.

See [Matter of Cervantes-Gonzalez](#), 22 I&N Dec. 560, 566 (BIA 1999), *aff'd*, [Cervantes-Gonzales v. INS](#), 244 F.3d 1001 (9th Cir. 2001). See [Matter of Ngai](#), 19 I&N Dec. 245 (BIA 1984). See [Matter of Shaughnessy](#), 12 I&N Dec. 810 (BIA 1968).

4.

See Chapter 7, Discretion [[9 USCIS-PM B.7](#)].

5.

In most cases, there will already have been a finding of inadmissibility, either by the consular officer adjudicating a visa application, or a USCIS officer adjudicating a related application, such as a [Form I-485](#), Application to Register Permanent Residence or Adjust Status. A formal finding of inadmissibility is not required in adjudicating a [Form I-601A](#), Application for Provisional Presence Waiver. The officer should identify all inadmissibility grounds and confirm that the ground(s) may be waived. This chart assumes that the inadmissibility grounds have been identified and that a waiver is available.

## Chapter 4 - Qualifying Relative

### A. Establishing the Relationship to the Qualifying Relative

A USCIS officer must verify that the relationship to a qualifying relative exists. When the qualifying relative is the visa petitioner, an officer should use the approval of the Petition for Alien Relative ([Form I-130](#)) as proof that the qualifying relationship has been established. <sup>[11]</sup>[An officer who has concerns about the qualifying relationship in the approved Form I-130 should consult with a supervisor.](#)

If the applicant’s relationship to the qualifying relative has not already been established through a prior approved petition, the USCIS officer must otherwise verify that the relationship to the qualifying relative exists. Along with the waiver application, applicants should include primary evidence that supports the relationship, such as marriage certificates, <sup>[12]</sup>[This includes marriages valid under the laws of the place of marriage.](#) birth certificates, adoption papers, paternity orders, orders of child support, or other court or official documents.

If such primary evidence does not exist or is otherwise unavailable, the applicant should explain the reason for the unavailability and submit secondary evidence of the relationship, such as school records or records of religious or other community institutions. If secondary evidence is also not reasonably available, the applicant may submit written testimony from a witness or witnesses with personal knowledge of the relevant facts.<sup>[3]</sup> [See 8 CFR 103.2\(b\)\(2\)\(i\)](#). If evidence establishing the relationship is missing or insufficient, the officer should issue a Request for Evidence (RFE) in accordance with USCIS policy.

If the applicant claims that the qualifying relative would suffer extreme hardship in part due to the hardship that would be suffered by a non-qualifying relative, the applicant must submit evidence establishing the claimed relationships.<sup>[4]</sup> [See Section D, Effect of Hardship Experienced by a Person who is not a Qualifying Relative \[9 USCIS-PM B.4\(D\)\]](#). If such evidence is missing or insufficient, the officer should issue an RFE in accordance with USCIS policy.

## **B. Separation or Relocation**

With respect to the requirement that the refusal of the applicant's admission "would result in" extreme hardship to a qualifying relative, there are 2 potential scenarios to consider. Either:

- The qualifying relative(s) may remain in the United States separated from the applicant who is denied admission (separation); or
- The qualifying relative(s) may relocate overseas with the applicant who is denied admission (relocation).

In either scenario, depending on all the facts of the particular case, the refusal of admission may result in extreme hardship to one or more qualifying relatives.

Separation may result in extreme hardship if refusal of the applicant's admission would cause hardship (for example, suffering or harm) to a qualifying relative that is greater than the common consequences of family separation.<sup>[5]</sup> [For discussion of the common consequences of family separation and relocation, see Chapter 5, Extreme Hardship Considerations and Factors, Section B, Common Consequences \[9 USCIS-PM B.5\(B\)\]](#). When assessing extreme hardship claims based on separation, USCIS focuses on how denial of the applicant's admission would affect the qualifying relative's well-being in the United States given the separation of the qualifying relative from the applicant.

Relocation may result in extreme hardship if refusal of the applicant's admission would cause hardship (for example, suffering or harm) to a qualifying relative that is greater than the common consequences of family relocation. When assessing extreme hardship claims based on relocation, USCIS focuses on how denial of the

applicant's admission would affect the qualifying relative's well-being given the qualifying relative's relocation outside the United States.

An applicant may show that extreme hardship to a qualifying relative would result from both separation and relocation.<sup>[6]</sup> [If an applicant who submits evidence related to both relocation and separation ultimately demonstrates extreme hardship with regard to only one scenario, the USCIS officer should determine, possibly through the issuance of an RFE, whether the qualifying relative has established which scenario is more likely to result from a denial of admission.](#) However, an applicant is not required to show extreme hardship under both scenarios. An applicant may submit evidence demonstrating which of the 2 scenarios would result from a denial of admission and may establish extreme hardship to one or more qualifying relatives by showing that either relocation or separation would result in extreme hardship.<sup>[7]</sup> [See, for example, Matter of Calderon-Hernandez, 25 I&N Dec. 885 \(BIA 2012\) \(remanding for determination of hardship based only on separation after immigration judge had rejected hardship based on relocation\). See Matter of Recinas, 23 I&N Dec 467 \(BIA 2002\) \(consideration of hardship based only on relocation\). See Cerrillo-Perez v. INS, 809 F.2d 1419 \(9th Cir. 1987\) \(ordering consideration of extreme hardship based on separation after Board of Immigration Appeals found no hardship based on relocation\). See Salcido-Salcido v. INS, 138 F.3d 1292 \(9th Cir. 1998\) \(same\). See Mendez v. Holder, 566 F.3d 316 \(2nd Cir. 2009\) \(ordering consideration of hardship only under relocation\). See Figueroa v. Mukasey, 543 F.3d 487 \(9th Cir. 2008\) \(remanding assessment of hardship only under relocation\).](#)

If the applicant seeks to demonstrate extreme hardship based on separation or relocation, the applicant's evidence must demonstrate that the designated outcome "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 or separate if the applicant is denied admission. The statement should be sufficiently detailed to adequately convey to USCIS the reasons why either separation or relocation would likely result from a denial of admission. The applicant may also submit documentation or other evidence, if available, in support of this statement.

Due to the subjective factors inherently involved in decisions involving separation or relocation, a credible statement from the qualifying relative may be the best available evidence for establishing whether he or she would separate or relocate if the applicant's admission is denied. Among other things, such decisions generally involve the weighing of many deeply personal and subjective factors that cannot be objectively assessed by others.

Qualifying relative spouses, for example, are faced with the choice of separating from their applicant spouses to remain in the United States or leaving the United States to relocate abroad with their applicant spouses. The former may involve, among other things, the significant decline in the emotional support and affection between spouses; the latter may involve leaving behind important ties to the United States, including family and friends in the country, jobs and career opportunities, educational opportunities, availability of medical care, and safety and security. Decisions based on such complex human factors may be difficult to prove other than through credible statements.

However, if the USCIS officer determines that such a statement is not plausible or credible (including because it is inconsistent with the evidence of hardship presented), the officer may request additional evidence from the applicant to support the designation that the qualifying relative would separate or relocate. In such cases, the

officer must consider the subjective nature of the inquiry and the difficulty involved in proving intent in this context through documentary or other supporting evidence.

Moreover, the officer must make determinations based on the evidence and arguments presented and not on the officer's personal moral view as to whether a particular qualifying relative "ought" to either relocate or separate in an individual case. Generally, in the absence of inconsistent evidence, a credible, sworn statement from the qualifying relative of his or her intent to relocate or separate would generally suffice to demonstrate what the qualifying relative plans to do.

Ultimately, the officer must be persuaded that it is more likely than not that a qualifying relative will suffer extreme hardship resulting from the denial of admission. In a case in which the applicant chooses to rely on evidence showing that extreme hardship would result from relocation, the officer must determine based on a preponderance of the evidence that relocation would occur. The same principle applies if the applicant chooses to rely on evidence showing that extreme hardship would result from separation. If the evidence presented fails to persuade the officer, the officer should provide an opportunity for the applicant to submit additional evidence—either to show that relocation or separation would occur, or to demonstrate that extreme hardship would result under both scenarios.

Finally, special considerations may arise in cases involving those limited statutory waivers for which a child may serve as a qualifying relative.<sup>[8]</sup> [This is authorized by statute in cases of waivers of criminal grounds under INA 212\(h\)\(1\)\(B\).](#) In such cases, a parent who asserts that he or she will separate from a child so that the child may remain in the United States bears the burden of overcoming the general presumption that the child will relocate with the parent. Among other factors, the parent should generally be expected to explain the arrangements for the child's care and support.

The failure to provide a credible plan for the care and support of the child would cast doubt on the parent's contention that he or she will actually leave the child behind in the United States.<sup>[9]</sup> [See Matter of Ige, 20 I&N Dec. 880, 885 \(BIA 1994\) \(holding that, for purposes of the former suspension of deportation, neither the parent's "mere assertion" that the child will remain in the United States nor the mere "possibility" of the child remaining is entitled to "significant weight," rather, the Board expects evidence that "reasonable provisions will be made for the child's care and support"\).](#) See [Iturribarria v. INS, 321 F.3d 889, 902-03 \(9th Cir. 2003\) \(finding that in suspension of deportation case, the petitioner could not claim extreme hardship from family separation without evidence of the family's intent to separate\).](#) See [Perez v. INS, 96 F.3d 390, 393 \(9th Cir. 1996\) \(holding that agency properly required, as means of reducing speculation in considering extreme hardship element in a suspension of deportation case, affidavits and other evidentiary material establishing that family members "will in fact separate"\).](#) Moreover, if the parent represents that the child will be left behind, USCIS may require the parent to state that understanding in a statement made under penalty of perjury.<sup>[10]</sup> [See Matter of Ige, 20 I&N Dec. 885, 885 \(BIA 1994\) \(requiring such an affidavit in suspension of deportation cases\).](#) Such a statement is not required, however, if the parent credibly represents that the child will be left behind in the care of the other parent.<sup>[11]</sup> [See Matter of Calderon-Hernandez, 25 I&N Dec. 885 \(BIA 2012\) \(concluding that when a child will stay behind with a parent in the United States, regardless of that parent's immigration status, the waiver applicant need not provide documentary evidence regarding the child's care\).](#) (which may itself give rise to extreme hardship depending on the totality of the circumstances).

### C. Effect on Extreme Hardship if Qualifying Relative Dies

Generally, the applicant must show extreme hardship to a qualifying relative who is alive at the time the waiver application is both filed and adjudicated.<sup>[12]</sup> [See Matter of Federiso, 24 I&N Dec. 661 \(BIA 2008\)](#). Unless a specific exception applies, an applicant cannot show extreme hardship if the qualifying relative has died.

[INA 204\(l\)](#) provides the only exception. In general, [INA 204\(l\)](#) allows USCIS to approve, or reinstate approval of, an immigrant visa petition and certain other benefits even though the petitioner or the principal beneficiary has died. [INA 204\(l\)](#) also provides that it applies generally to “any related applications,” thereby including applications for waivers related to immigrant visa petitions.

Under this provision, a foreign national who establishes that the requirements of [INA 204\(l\)](#) have been met may apply for a waiver even though the qualifying relative for purposes of extreme hardship has died. Moreover, in cases in which the deceased individual is both the qualifying relative for purposes of [INA 204\(l\)](#) and the qualifying relative for purposes of the extreme hardship determination, the death of the qualifying relative is treated as the functional equivalent of a finding of extreme hardship.<sup>[13]</sup> [See AFM Chapter 10.21\(c\)\(5\), Waivers and Other Related Applications](#).

Section 204(l) also applies in the case of widows and widowers of U.S. citizens whose pending or approved petition was converted to a Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)),<sup>[14]</sup> [See 8 CFR 204.2\(i\)\(1\)\(iv\)](#), including if the petition later reverts to a [Form I-130](#) petition based on a subsequent remarriage.<sup>[15]</sup> [For more detailed guidance on the approval of petitions and applications after the death of a qualifying relative under INA 204\(l\), see Approval of Petitions and Applications after the Death of the Qualifying Relative under New Section 204\(l\) of the Immigration and Nationality Act, issued December 16, 2010, and Approval of a Spousal Immediate Relative Visa Petition under Section 204\(l\) of the Immigration and Nationality Act after the Death of a U.S. Citizen Petitioner, issued November 18, 2015. See Williams v. DHS, 741 F.3d 1228 \(11th Cir. 2014\) \(noting congressional intent in not expressly including a “remarriage bar” in 204\(l\) and finding “\[t\]hat a spouse eventually remarries does nothing to impugn the validity of the original I-130 beneficiary-petition or the first marriage, and leaves the surviving spouse in the same position she would have been but for the untimely passing of her husband, an event beyond her control.”\). USCIS applies this ruling to all cases it adjudicates.](#)

### D. Effect of Hardship Experienced by a Person who is not a Qualifying Relative

On its own, hardship to a non-qualifying relative<sup>[16]</sup> [For example, hardship to the applicant’s child when the particular waiver provision lists only the applicant’s spouse and parents as qualifying relatives](#), cannot satisfy the extreme hardship requirement. In some cases, however, the hardship experienced by non-qualifying relatives can be considered as part of the extreme hardship determination, but only to the extent that such hardship affects one or more qualifying relatives.<sup>[17]</sup> [See Matter of Gonzalez Recinas, 23 I&N Dec. 467, 471 \(BIA 2002\) \(“In addition to the hardship of the United States citizen children, factors that relate only to the respondent may also be considered to the extent that they affect the potential level of hardship to her qualifying relatives.”\)](#).

## 1. Hardship to the Applicant

Except for certain applicants who are Violence Against Women Act (VAWA) self-petitioners, applicants for the waivers enumerated in Chapter 1 may not meet the relevant extreme hardship requirements by establishing hardship to themselves. In cases in which applicants who are not VAWA self-petitioners submit evidence of hardship to themselves, officers should consider the alleged hardships only as they affect the applicants' qualifying relatives.

For example, consider an applicant who indicates he suffers from a medical condition for which he would be unable to obtain necessary medical treatment in his home country. The applicant provides medical documentation about his condition and Department of State (DOS) information on country conditions that corroborate his statements. Because the applicant is not a qualifying relative, his claims alone cannot meet the extreme hardship requirement of the waiver.

However, the applicant's condition and prospective situation may show that denial of his admission would have a significant emotional or financial impact on one or more qualifying relatives in the United States. The USCIS officer may consider such impacts when determining whether the qualifying relative(s) would experience extreme hardship upon the applicant's denial of admission.

## 2. Hardship to Other Non-Qualifying Relatives

Similarly, if the applicant claims hardship to an individual who is not a qualifying relative for purposes of the relevant waiver, the officer should consider the alleged hardship only as it affects one or more qualifying relatives.

For example, consider an applicant who is married to a U.S. citizen with whom she has a 5-year-old child with a disability. Unless the relevant waiver allows for her child to serve as a qualifying relative, the USCIS officer may not consider the hardship to the child if the applicant is denied admission. The officer, however, may consider the child's disability when assessing whether the denial of admission will cause hardship for the qualifying-relative spouse. For example, denial of admission may impact the qualifying parent's financial and emotional ability to care for the disabled child.<sup>[18]</sup> [See \*Zamora-Garcia v. INS\*, 737 F.2d 488, 494 \(5th Cir. 1984\) \(requiring, in suspension of deportation case, "consideration of the hardship to the \[qualifying applicant\] posed by the possibility of separation from the \[non-qualifying third party children\]"\).](#) Moreover, even if such derivative hardship does not rise to the level of extreme hardship by itself, it is a factor that should be considered when determining whether the qualifying relative's hardship, considered in the aggregate, rises to the level of extreme.

## E. Aggregating Hardships

To establish extreme hardship, it is not necessary to demonstrate that a single hardship, taken in isolation, rises to the level of “extreme.” Rather, any relevant hardship factors “must be considered in the aggregate, not in isolation.”<sup>[19]</sup> [See \*Bueno-Carrillo v. Landon\*, 682 F.2d 143, 146 n.3 \(7th Cir. 1982\)](#). [See \*Ramos v. INS\*, 695 F.2d 181, 186 n.12 \(5th Cir. 1983\)](#). Therefore, even if no one factor individually rises to the level of extreme hardship, the USCIS officer “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation” (or, in this case, the refusal of admission).<sup>[20]</sup> [See \*Matter of O-J-O-\*, 21 I&N Dec. 381, 383 \(BIA 1996\)](#). Moreover, even “those hardships ordinarily associated with deportation, . . . while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.”<sup>[21]</sup> [See \*Matter of O-J-O-\*, 21 I&N Dec. 381, 383 \(BIA 1996\)](#). [See \*Matter of Ige\*, 20 I&N Dec. 880, 882 \(BIA 1994\)](#) (“Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.”).

The applicant needs to show extreme hardship to only one qualifying relative.<sup>[22]</sup> [See, for example, INA 212\(h\), INA 212\(i\), and INA 212\(a\)\(9\)\(B\)\(v\)](#). But an applicant may have more than one qualifying relative. In such cases, if there is no single qualifying relative whose hardship alone is severe enough to be found “extreme,” the extreme hardship standard would be met if the combination of hardships to 2 or more qualifying relatives in the aggregate rises to the level of extreme hardship.<sup>[23]</sup> [See \*Watkins v. INS\*, 63 F.3d 844, 850 \(9th Cir. 1995\)](#) (reversing BIA decision on ground it had failed to aggregate the “professional and social changes” of the petitioner, who was a qualifying relative under the particular statute, with the hardship to the applicant’s children, who were also qualifying relatives). [See \*Prapavat v. INS\*, 638 F.2d 87, 89 \(9th Cir. 1980\)](#) (holding that extreme hardship “may also be satisfied . . . by showing that the aggregate hardship to two or more family members described in 8 U.S.C. 1254(a)(1) is extreme, even if the hardship suffered by any one of them would be insufficient by itself”), on rehearing, 662 F.2d 561, 562-63 (9th Cir. 1981) (per curiam) (again listing both hardships to the qualifying relative petitioners and hardships to their U.S. citizen child, holding that these hardships “must all be assessed in combination,” and finding that the Board had erred in failing to do so). [See \*Jong Ha Wang v. INS\*, 622 F.2d 1341, 1347 \(9th Cir. 1980\)](#) (“[T]he Board should consider the aggregate effect of deportation on all such persons when the alien alleges hardship to more than one.”), rev’d on other grounds, 450 U.S. 139 (1981) (per curiam). These decisions all interpreted the former suspension of deportation provision. The list of qualifying individuals (which included the petitioners themselves) whose extreme hardship sufficed under that provision differed from the lists of qualifying relatives in the waiver provisions discussed here, but the statutory language was identical in all other relevant respects (“result in extreme hardship to . . .”).

Therefore, if the applicant demonstrates that the combined hardships that two or more qualifying relatives would suffer rise to the level of extreme hardship, the applicant has met the extreme hardship standard. If the applicant presents evidence of hardship to multiple qualifying relatives that does not rise to the level of extreme hardship to any one qualifying relative, the USCIS officer should aggregate all of their hardships to decide whether these hardships combined rise to the level of extreme hardship.<sup>[24]</sup> [Hardships that the BIA has held to be “common results” in themselves are insufficient for a finding of extreme hardship. See \*Matter of Ngai\*, 19 I&N Dec. 245 \(BIA 1984\). A common consequence, however, when combined with other factors that alone would also have been insufficient, may meet the extreme hardship standard when considered in the aggregate. For a list of those common consequences, see Chapter 5, Extreme Hardship Considerations and Factors, Section B, Common Consequences \[9 USCIS-PM B.5\(B\)\].](#)

## Footnotes

1.

An officer who has concerns about the qualifying relationship in the approved [Form I-130](#) should consult with a supervisor.

2.

This includes marriages valid under the laws of the place of marriage.

3.

See [8 CFR 103.2\(b\)\(2\)\(i\)](#).

4.

See Section D, Effect of Hardship Experienced by a Person who is not a Qualifying Relative [[9 USCIS-PM B.4\(D\)](#)].

5.

For discussion of the common consequences of family separation and relocation, see Chapter 5, Extreme Hardship Considerations and Factors, Section B, Common Consequences [[9 USCIS-PM B.5\(B\)](#)].

6.

If an applicant who submits evidence related to both relocation and separation ultimately demonstrates extreme hardship with regard to only one scenario, the USCIS officer should determine, possibly through the issuance of an RFE, whether the qualifying relative has established which scenario is more likely to result from a denial of admission.

7.

See, for example, [Matter of Calderon-Hernandez](#), 25 I&N Dec. 885 (BIA 2012) (remanding for determination of hardship based only on separation after immigration judge had rejected hardship based on relocation). See [Matter of Recinas](#), 23 I&N Dec 467 (BIA 2002) (consideration of hardship based only on relocation). See [Cerrillo-Perez v. INS](#), 809 F.2d 1419 (9th Cir. 1987) (ordering consideration of extreme hardship based on separation after Board of Immigration Appeals found no hardship based on relocation). See [Salcido-Salcido v. INS](#), 138 F.3d 1292 (9th Cir. 1998) (same). See [Mendez v. Holder](#), 566 F.3d 316 (2nd Cir. 2009) (ordering consideration of hardship only under relocation). See [Figueroa v. Mukasey](#), 543 F.3d 487 (9th Cir. 2008) (remanding assessment of hardship only under relocation).

8.

This is authorized by statute in cases of waivers of criminal grounds under [INA 212\(h\)\(1\)\(B\)](#).

9.

See [Matter of Ige](#), 20 I&N Dec. 880, 885 (BIA 1994) (holding that, for purposes of the former suspension of deportation, neither the parent's "mere assertion" that the child will remain in the United States nor the mere "possibility" of the child remaining is entitled to "significant weight;" rather, the Board expects evidence that "reasonable provisions will be made for the child's care and support"). See [Iturribarria v. INS](#), 321 F.3d 889, 902-03 (9th Cir. 2003) (finding that in suspension of deportation case, the petitioner could not claim extreme hardship from family separation without evidence of the family's intent to separate). See [Perez v. INS](#), 96 F.3d 390, 393 (9th Cir. 1996) (holding that agency properly required, as means of reducing speculation in considering extreme hardship element in a suspension of deportation case, affidavits and other evidentiary material establishing that family members "will in fact separate").

10.

See [Matter of Ige](#), 20 I&N Dec. 885, 885 (BIA 1994) (requiring such an affidavit in suspension of deportation cases).

11.



See [Matter of Calderon-Hernandez](#), 25 I&N Dec. 885 (BIA 2012) (concluding that when a child will stay behind with a parent in the United States, regardless of that parent's immigration status, the waiver applicant need not provide documentary evidence regarding the child's care).

12.

See [Matter of Federiso](#), 24 I&N Dec. 661 (BIA 2008).

13.

See [AFM Chapter 10.21\(c\)\(5\), Waivers and Other Related Applications](#).

14.

See [8 CFR 204.2\(i\)\(1\)\(iv\)](#).

15.

For more detailed guidance on the approval of petitions and applications after the death of a qualifying relative under [INA 204\(l\)](#), see [Approval of Petitions and Applications after the Death of the Qualifying Relative under New Section 204\(l\) of the Immigration and Nationality Act](#), issued December 16, 2010, and [Approval of a Spousal Immediate Relative Visa Petition under Section 204\(l\) of the Immigration and Nationality Act after the Death of a U.S. Citizen Petitioner](#), issued November 18, 2015. See *Williams v. DHS*, 741 F.3d 1228 (11th Cir. 2014) (noting congressional intent in not expressly including a "remarriage bar" in 204(l) and finding "[t]hat a spouse eventually remarries does nothing to impugn the validity of the original I-130 beneficiary-petition or the first marriage, and leaves the surviving spouse in the same position she would have been but for the untimely passing of her husband, an event beyond her control."). USCIS applies this ruling to all cases it adjudicates.

16.

For example, hardship to the applicant's child when the particular waiver provision lists only the applicant's spouse and parents as qualifying relatives.

17.

See [Matter of Gonzalez Recinas](#), 23 I&N Dec. 467, 471 (BIA 2002) ("In addition to the hardship of the United States citizen children, factors that relate only to the respondent may also be considered to the extent that they affect the potential level of hardship to her qualifying relatives.").

18.

See *Zamora-Garcia v. INS*, 737 F.2d 488, 494 (5th Cir. 1984) (requiring, in suspension of deportation case, "consideration of the hardship to the [qualifying applicant] posed by the possibility of separation from the [non-qualifying third party children]").

19.

See *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 n.3 (7th Cir. 1982). See *Ramos v. INS*, 695 F.2d 181, 186 n.12 (5th Cir. 1983).

20.

See [Matter of O-J-O-](#), 21 I&N Dec. 381, 383 (BIA 1996).

21.

See [Matter of O-J-O-](#), 21 I&N Dec. 381, 383 (BIA 1996). See [Matter of Ige](#), 20 I&N Dec. 880, 882 (BIA 1994) ("Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.").

22.

See, for example, [INA 212\(h\)](#), [INA 212\(i\)](#), and [INA 212\(a\)\(9\)\(B\)\(v\)](#).

23.

See *Watkins v. INS*, 63 F.3d 844, 850 (9th Cir. 1995) (reversing BIA decision on ground it had failed to aggregate the “professional and social changes” of the petitioner, who was a qualifying relative under the particular statute, with the hardship to the applicant’s children, who were also qualifying relatives). See *Prapavat v. INS*, 638 F.2d 87, 89 (9th Cir. 1980) (holding that extreme hardship “may also be satisfied ... by showing that the aggregate hardship to two or more family members described in 8 U.S.C. 1254(a)(1) is extreme, even if the hardship suffered by any one of them would be insufficient by itself”), on *rehearing*, 662 F.2d 561, 562-63 (9th Cir. 1981) (per curiam) (again listing both hardships to the qualifying relative petitioners and hardships to their U.S. citizen child, holding that these hardships “must all be assessed in combination,” and finding that the Board had erred in failing to do so). See *Jong Ha Wang v. INS*, 622 F.2d 1341, 1347 (9th Cir. 1980) (“[T]he Board should consider the aggregate effect of deportation on all such persons when the alien alleges hardship to more than one.”), *rev’d on other grounds*, 450 U.S. 139 (1981) (per curiam). These decisions all interpreted the former suspension of deportation provision. The list of qualifying individuals (which included the petitioners themselves) whose extreme hardship sufficed under that provision differed from the lists of qualifying relatives in the waiver provisions discussed here, but the statutory language was identical in all other relevant respects (“result in extreme hardship to ...”).

24.

Hardships that the BIA has held to be “common results” in themselves are insufficient for a finding of extreme hardship. See [Matter of Ngai](#), 19 I&N Dec. 245 (BIA 1984). A common consequence, however, when combined with other factors that alone would also have been insufficient, may meet the extreme hardship standard when considered in the aggregate. For a list of those common consequences, see Chapter 5, Extreme Hardship Considerations and Factors, Section B, Common Consequences [[9 USCIS-PM B.5\(B\)](#)].

## Chapter 5 - Extreme Hardship Considerations and Factors

### A. Totality of the Circumstances

The officer must make extreme hardship determinations based on the factors, arguments, and evidence submitted.<sup>[1]</sup> See [Matter of Cervantes-Gonzalez](#), 22 I&N Dec. 560 (BIA 1999), *aff’d*, [Cervantes-Gonzales v. INS](#), 244 F.3d 1001 (9th Cir. 2001). See [Matter of L-O-G-](#), 21 I&N Dec. 413 (BIA 1996). See [Matter of Anderson](#), 16 I&N Dec. 596 (BIA 1978). Therefore, the officer should consider any submission from the applicant bearing on the extreme hardship determination. The officer may also consider factors, arguments, and evidence relevant to the extreme hardship determination that the applicant has not specifically presented, such as those addressed in Department of State (DOS) information on country conditions<sup>[2]</sup> See [DOS Country Reports on Human Rights Practices and DOS Travel Warnings](#), or other U.S. Government determinations regarding country conditions, including a country’s designation for Temporary Protected Status (TPS). Officers must base their decisions on the totality of the evidence and circumstances presented.

### B. Common Consequences

The common consequences of denying admission, in and of themselves, do not warrant a finding of extreme hardship.<sup>[3]</sup> See [Matter of Ngai](#), 19 I&N Dec. 245 (BIA 1984) (“Common results of the bar, such as separation, financial difficulties, etc. in themselves are insufficient to warrant approval of an application unless combined

[with much more extreme impacts"\).](#) The Board of Immigration Appeals (BIA) has held that the common consequences of denying admission include, but are not limited to, the following:

- Family separation;
- Economic detriment;
- Difficulties of readjusting to life in the new country;
- The quality and availability of educational opportunities abroad;
- Inferior quality of medical services and facilities; and
- Ability to pursue a chosen employment abroad.

While extreme hardship must involve more than the common consequences of denying admission, the extreme hardship standard is not as high as the significantly more burdensome “exceptional and extremely unusual” hardship standard that applies to other forms of immigration adjudications, such as cancellation of removal.

[\[4\] See INA 240A\(b\)\(1\)\(D\).](#)

### **C. Factors Must Be Considered Cumulatively**

The officer must consider all factors and consequences in their totality and cumulatively when assessing whether a qualifying relative will experience extreme hardship either in the United States or abroad. In some cases, common consequences that on their own do not constitute extreme hardship may result in extreme hardship when assessed cumulatively with other factors. [\[5\] See Matter of O-J-O-, 21 I&N Dec. 381, 383 \(BIA 1996\).](#)

For example, if a qualifying relative has a medical condition that alone does not rise to the level of extreme hardship, the combination of that hardship and the common consequences of inferior medical services, economic detriment, or readjusting to life in another country may cumulatively cause extreme emotional or financial hardship for the qualifying relative when considering the totality of the circumstances.

Ordinarily, for example, the fact that medical services are less comprehensive in another country is a common consequence of denying admission; but the inferior quality of medical services, considered along with the individual's specific medical conditions, may create sufficient difficulties as to rise to the level of extreme hardship in combination with all the other consequences.

The officer must weigh all factors individually and cumulatively, as follows:

- First, the officer must consider whether any factor set forth individually rises to the level of extreme hardship under the totality of the circumstances.
- Second, if any factor alone does not rise to the level of extreme hardship, the officer must consider all factors together to determine whether they cumulatively rise to the level of extreme hardship. This includes hardships to multiple qualifying relatives.

When considering the factors, whether individually or cumulatively, all factors, including negative factors, must be evaluated in the totality of the circumstances.

#### **D. Examples of Factors that May Support a Finding of Extreme Hardship**

The chart below lists factors that an applicant might present and that would be relevant to determining whether an applicant has demonstrated extreme hardship to a qualifying relative. This list is not exhaustive; circumstances that are not on this list may also be relevant to finding extreme hardship.

The presence of one or more of the factors below in a particular case does not mean that extreme hardship would necessarily result from a denial of admission. But they are factors that may be encountered and should be considered in their totality and cumulatively in individual cases. All hardship factors presented by the applicant should be considered in the totality of the circumstances in making the extreme hardship determination.

Some of the factors listed below apply when the qualifying relative would remain in the United States without the applicant. Other factors apply when the qualifying relative would relocate abroad. Some of the factors might apply under either circumstance.

<b>Factors and Considerations for Extreme Hardship</b>	
<b>Factors</b>	<b>Considerations</b>
<small>AILA Doc. No. 16102107. (Posted 10/24/16)</small>	

### Family Ties and Impact

- Qualifying relative's ties to family members living in the United States, including age, status, and length of residence of any children.
- Responsibility for the care of any family members in the United States, particularly children, elderly adults, and disabled adults.
- The qualifying relative's ties, including family ties, to the country of relocation, if any.
- Nature of relationship between the applicant and the qualifying relative, including any facts about the particular relationship that would either aggravate or lessen the hardship resulting from separation.
- Qualifying relative's age.
- Length of qualifying relative's residence in the United States.
- Length of qualifying relative's prior residence in the country of relocation, if any.
- Prior or current military service of qualifying relative
- Impact on the cognitive, social, or emotional well-being of a qualifying relative who is left to replace the applicant as caregiver for someone else, or impact on the qualifying relative (for example, child or parent) for whom such care is required.

- Loss of access to the U.S. courts and the criminal justice system, including the loss of opportunity to request or provide testimony in criminal investigations or prosecutions; to participate in proceedings to enforce labor, employment, or civil rights laws; to participate in family law proceedings, victim's compensation proceedings, or other civil proceedings; or to obtain court orders regarding protection, child support, maintenance, child custody, or visitation.
- Fear of persecution or societal discrimination.
- Prior grant of U nonimmigrant status.
- Existence of laws and social practices in the country of relocation that would punish the qualifying relative because he or she has been in the United States or is perceived to have Western values.

## Social and Cultural Impact

- Access or lack of access to social institutions and structures (official and unofficial) for support, guidance, or protection.
  - Social ostracism or stigma based on characteristics such as gender, gender identity, sexual orientation, religion, race, national origin, ethnicity, citizenship, age, political opinion, marital status, or disability. <sup>[6]</sup> [The characteristics for which a person is ostracized or stigmatized may be actual or perceived \(that is, the person may actually have that characteristic, or someone may perceive the person as having that characteristic\).](#)
  - Qualifying relative's community ties in the United States and in the country of relocation.
  - Extent to which the qualifying relative has integrated into U.S. culture, including language, skills, and acculturation.
  - Extent to which the qualifying relative would have difficulty integrating into the country of relocation, including understanding and adopting social norms and established customs, including gender roles and ethical or moral codes.
  - Difficulty and expense of travel/communication to maintain ties between qualifying relative and applicant, if the qualifying relative does not relocate.
  - Qualifying relative's present inability to communicate in the language of the country of relocation, as well as the time and difficulty that learning that language would entail.
  - Availability and quality of educational opportunities for qualifying relative (and children, if any) in the country of relocation.
  - Availability and quality of job training, including technical or vocational opportunities, for qualifying relative (and children, if any) in the country of relocation.
- 
- Economic impact of applicant's departure on the qualifying relative, including the applicant's or qualifying relative's ability to obtain employment in the country of relocation.
  - Economic impact resulting from the sale of a home, business, or other asset.

<p><b>Economic Impact</b></p>	<ul style="list-style-type: none"> <li>• Economic impact resulting from the termination of a professional practice.</li> <li>• Decline in the standard of living, including due to significant unemployment, underemployment, or other lack of economic opportunity in the country of relocation.</li> <li>• Ability to recoup losses, or repay student loan debt.</li> <li>• Cost of extraordinary needs, such as special education or training for children.</li> <li>• Cost of care for family members, including children and elderly, sick, or disabled parents.</li> </ul>
<p><b>Health Conditions &amp; Care</b></p>	<ul style="list-style-type: none"> <li>• Health conditions and the availability and quality of any required medical treatment in the country to which the applicant would be returned, including length and cost of treatment.</li> <li>• Psychological impact on the qualifying relative due to either separation from the applicant or departure from the United States, including separation from other family members living in the United States.</li> <li>• Psychological impact on the qualifying relative due to the suffering of the applicant.</li> <li>• Prior trauma suffered by the qualifying relative that may aggravate the psychological impact of separation or relocation, including trauma evidenced by prior grants of asylum, refugee status, or other forms of humanitarian protection.</li> </ul>
<p><b>Country Conditions</b> <sup>[7]</sup> <u>The officer should consider any submitted government or nongovernmental reports on country conditions specified in the hardship claim. In the absence of any evidence submitted on country conditions, the officer may refer to DOS information on country conditions, such as DOS Country Reports on</u></p>	<ul style="list-style-type: none"> <li>• Conditions in the country of relocation, including civil unrest or generalized levels of violence, current U.S. military operations in the country, active U.S. economic sanctions against the country, ability of country to address significant crime, environmental catastrophes like flooding or earthquakes, and other socio-economic or political conditions that jeopardize safe repatriation or lead to reasonable fear of physical harm.</li> <li>• Temporary Protected Status (TPS) designation. <sup>[8]</sup> <u>For more information on TPS, see the USCIS website.</u></li> <li>• Danger Pay for U.S. government workers stationed in the country of nationality. <sup>[9]</sup> <u>See 5 U.S.C. 5928.</u></li> </ul>

**Human Rights Practices and the most recent DOS Travel Warnings, to corroborate the claim.**

**See Department of State Danger Pay Regulations, available at Standardized Regulations (DSSR).**

- Withdrawal of Peace Corps from the country of nationality for security reasons.
- DOS Travel Warnings or Alerts, whether or not they constitute a particularly significant factor, as set forth in Part E below.

## **E. Particularly Significant Factors**

The preceding list identifies factors that may bear on whether a denial of admission would result in extreme hardship. Below are factors that USCIS has determined often weigh heavily in support of finding extreme hardship. An applicant who seeks to demonstrate the presence of one of the enumerated circumstances must submit sufficient reliable evidence to support the existence of such circumstance(s) and show that the circumstance will cause extreme hardship to the qualifying relative. The mere presence of an enumerated circumstance does not create a presumption of extreme hardship. The ultimate determination of extreme hardship must be based on the totality of the circumstances present in the individual case.

It is important to emphasize that the enumerated circumstances listed below are specifically highlighted only because they are often likely to support findings of extreme hardship. Other hardships not enumerated may also rise to the level of extreme, even if they vary significantly than those listed below. <sup>[10]</sup>[See Section D, Examples of Factors that Might Support Finding of Extreme Hardship \[9 USCIS-PM B.5\(D\)\].](#)

Eligibility for an immigration benefit ordinarily must exist at the time of filing and at the time of adjudication. <sup>[11]</sup>[See 8 CFR 103.2\(b\)\(1\).](#) However, considering the nature of the particularly significant factors described below, the presence of one or more of these circumstances at the time of adjudication should be considered by a USCIS officer even if the circumstance arose after the filing of the waiver request.

### **1. Qualifying Relative Previously Granted Iraqi or Afghan Special Immigrant Status, T Nonimmigrant Status, or Asylum or Refugee Status**

If a qualifying relative was previously granted Iraqi or Afghan special immigrant status, <sup>[12]</sup>[See, for example, Division F, Title VI of the Omnibus Appropriations Act of 2009, Pub. L. 111-8, 123 Stat. 524, 807 \(March 11, 2009\). See Section 1244 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, 122 Stat. 3, 396 \(January 28, 2008\). See Section 1059 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109-163, 119 Stat. 3136, 3443 \(January 6, 2006\), as amended by Pub. L. 110-36, 121 Stat. 227 \(June 15, 2007\).](#) T nonimmigrant status, asylum status, or refugee status in the United States from the country of relocation and the qualifying relative's status has not been revoked, those factors would often weigh heavily in



support of finding extreme hardship.<sup>[13]</sup> [Although it is unlikely that a qualifying relative would have been granted withholding of removal under INA 241\(b\)\(3\) or withholding or deferral of removal under the Convention Against Torture \(CAT\), if a qualifying relative was previously granted such a form of relief, this would often weigh heavily in support of a finding of extreme hardship to that qualifying relative, similar to situations involving qualifying relatives described in this particularly significant factor.](#) The existence of this circumstance normally results in hardship greater than the common consequences denying admission, whether in cases involving relocation or separation.

The prior decision to grant the qualifying relative status as an Iraqi or Afghan special immigrant, T nonimmigrant, refugee, or asylee indicates the significantly heightened risk that relocation to the country from which he or she received protection could result in retaliatory violence, persecution or other danger to the qualifying relative. This prior assessment by USCIS would often weigh heavily in support of finding extreme hardship in a case involving relocation.

The same is also true in cases involving separation. The prior assessment by USCIS with respect to the qualifying relative indicates that he or she would likely face increased difficulty returning to that country to visit the applicant, thus generally resulting in hardship that is greater than that normally present in cases involving family separation. The applicant might also show that, due to their relationship, the applicant may experience persecution or other dangers similar to those that gave rise to the qualifying relative's underlying status. The qualifying relative in such a case may suffer additional psychological trauma due to the potential for harm to the applicant in the country of relocation.

## **2. Qualifying Relative or Related Family Member's Disability**

Cases involving disabled individuals often involve hardships that rise above the common consequences. If a government agency has made a formal disability determination<sup>[14]</sup> [Federal agency programs focusing on individuals with disabilities generally rely on definitions found in their authorizing legislation. These definitions may be unique to an agency's program.](#) with regard to the qualifying relative, or with regard to a family member of the qualifying relative who is dependent on the qualifying relative for care, that factor would often weigh heavily in support of finding that either relocation or separation would result in extreme hardship under the totality of the circumstances.

In cases involving either (1) relocation of the qualifying relative with a disability or (2) relocation of both the qualifying relative and the relevant family member with a disability, the applicant will need to show that the services available to the disabled individual in the country of relocation are unavailable or significantly inferior to those available to him or her in the United States. In such cases, the disability determination would often weigh heavily in support of a finding of extreme hardship.

In cases involving separation, the applicant will need to show that the qualifying relative with a disability, or the relevant family member with a disability, generally requires the applicant's assistance for care due to the disability. Where replacement care is not realistically available and obtainable, the disability determination would often weigh heavily in support of a finding of extreme hardship.

Absent a formal disability determination, an applicant may provide other evidence that a qualifying relative or relevant individual suffers from a medical condition, whether mental or physical, that makes either travel to, or residence in, the country of relocation detrimental to the qualifying relative or family member's health or safety. Similarly, an applicant may provide other evidence that the condition of the qualifying relative requires the applicant's assistance for care.

### 3. Qualifying Relative's Military Service

Military service by a qualifying relative often results in hardships from denial of the applicant's admission that rise above the common consequences of denying admission. If a qualifying relative is an Active Duty member of any branch of the U.S. armed forces,<sup>[15]</sup> [See 10 U.S.C. 101. The term "armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.](#) or is an individual in the Selected Reserve of the Ready Reserve, denial of an applicant's admission often causes psychological and emotional harm that significantly exacerbates the stresses, anxieties and other hardships inherent in military service by a qualifying relative.

This may result in an impairment of the qualifying relative's ability to serve the U.S. military, or to be quickly called into active duty in the case of reservists, which also affects military preparedness. This is often the case even if the qualifying relative's military service already separates, or will separate, him or her from the applicant. In such circumstances, the applicant's removal abroad may magnify the stress of military service to a level that would constitute extreme hardship.

### 4. DOS Travel Warnings

DOS issues [travel warnings](#) to notify travelers of the risks of traveling to certain foreign countries.<sup>[16]</sup> [See DOS Travel Warnings.](#) Reasons for issuing travel warnings include, but are not limited to, unstable government, civil war, ongoing intense crime or violence, or frequent terrorist attacks. A travel warning remains in place until changes in circumstances sufficiently mitigate the need for such a warning. With respect to some travel warnings, DOS advises of travel risks to a specific region or regions of the country at issue.

In some situations, DOS issues travel warnings that do more than notify travelers of the risks of traveling to a particular country or region(s) within a country. Rather, DOS affirmatively recommends against travel or affirmatively recommends that U.S. citizens depart. DOS may make such travel warnings country-wide. Such travel warnings may contain language in which:

- DOS urges avoiding all travel to the country or region because of safety and security concerns;

- DOS warns against all but essential travel to the country or region;
- DOS advises deferring all non-essential travel to the country or region; and/or
- DOS advises U.S. citizens currently in the country or region to depart.

In cases where a qualifying relative would relocate to a country or region that is the subject of such DOS recommendations against travel, the travel warning would often weigh heavily in support of a finding of extreme hardship. In assessing the dangers in the country of relocation, USCIS officers should give weight to DOS travel warnings, taking into account the nature and severity of such warnings.

Generally, the fact that the country of relocation is currently subject to a DOS country-wide travel warning against travel may indicate that a qualifying relative would face significantly increased danger if he or she were to relocate to that country with the applicant. This significantly increased danger would often support a finding of extreme hardship.

If the relevant travel warning covers only a part or region of the country of relocation, the USCIS officer must determine whether the qualifying relative would relocate to the part or region that is subject to the warning. If the officer finds that this part or region is one to which the qualifying relative plans to return despite the increased danger (for example, because of family relationships or employment opportunities), that may indicate that the qualifying relative would face significantly increased danger if he or she were to relocate to that part or region. This significantly increased danger would often support a finding of extreme hardship.

Alternatively, if the officer finds that the qualifying relative would relocate to a part of the country that is not subject to the travel warning (because of the danger in the part or region covered by the travel warning or for any other reason), that indicates that the qualifying relative would generally not face significantly increased danger upon relocation.

If the officer finds that the qualifying relative would remain in the United States while the applicant returns to a country or region that is subject to a DOS warning against travel, the officer should evaluate whether the separation may result in extreme hardship to the qualifying relative. In such cases, the officer should consider the hardship to the qualifying relative resulting from the increased danger to the applicant in the relevant country or region.

##### **5. Substantial Displacement of Care of Applicant's Children**

USCIS recognizes the importance of family unity and the ability of parents and other caregivers to provide for the well-being of children.<sup>[17]</sup>The term “child” includes those related to the applicant by birth, adoption, marriage, legal custody, or guardianship. Depending on the particular facts of a case, either the continuation of one’s existing caregiving duties under new and difficult circumstances or the need to assume someone else’s caregiving duties can be sufficiently burdensome to rise to the level of extreme hardship. The children do not need to be U.S. citizens or lawful permanent residents (LPRs) in such cases.<sup>[18]</sup>In this scenario, the children are assumed to be under age 21. See INA 101(b)(1) and INA 101(c)(1).

In cases involving the separation of spouses in which the qualifying relative is the primary caretaker and the applicant is the primary income earner, the income earner’s refusal of admission often causes economic loss to the caregiver. Although economic loss alone is generally a common consequence of a denial of admission, depending on the particular circumstances the economic loss associated with the denial of admission may create burdens on the caregiver that are severe enough to rise to the level of extreme hardship. That can occur, for example, when the qualifying relative must take on the additional burdens of primary income earner while remaining the primary caregiver. That dual responsibility may significantly disrupt the qualifying relative’s ability to meet his or her own basic subsistence needs or those of the person(s) for whom the care is being provided. In such cases, the dual burden would often support a finding of extreme hardship. In addition, the qualifying relative may suffer significant emotional and psychological impacts from being the sole caregiver of the child(ren) that exceed the common consequences of being left as a sole parent.

In cases involving the separation of spouses in which the qualifying relative is the primary income earner and the applicant is the primary caretaker, the caretaker’s refusal of admission can result in a substantial shift of caregiving responsibility from the applicant to the qualifying relative. Such a shift may significantly affect the qualifying relative’s ability to earn income for the family; disrupt family, social, and cultural ties; or hinder the child(ren)’s psychological, cognitive, or emotional development.

The shift may also frustrate or complicate the qualifying relative’s efforts to provide a healthy, stable, and caring environment for the child(ren). Such additional emotional, psychological and/or economic stress for the qualifying relative could exceed the levels of hardship that ordinarily result from family separation, and rise to the level of extreme hardship.<sup>[19]</sup>These scenarios are not exhaustive. For example, even when a qualifying relative is not the primary caretaker or breadwinner. Nonetheless, the loss of the applicant’s contribution to caretaking or support may have consequences that rise to the level of extreme hardship to the qualifying relative based on the totality of the circumstances.

Under either scenario discussed above, the significant shifting of caregiving or income-earning responsibilities would often weigh heavily in support a finding of extreme hardship to the qualifying relative, provided the applicant shows:

- The existence of a bona fide relationship between the applicant and the child(ren);
- The existence of a bona fide relationship between the qualifying relative and the child(ren); and

- The substantial shifting of caregiving or income-earning responsibilities under circumstances in which the ability to adequately care for the children would be significantly compromised.

To prove a bona fide relationship to the child(ren), the applicant and qualifying relative should have emotional and/or financial ties or a genuine concern and interest for the child(ren)'s support, instruction, and general welfare. [\[20\] USCIS applies a similar principle when assessing whether there is a bona fide relationship between a father and his child born out of wedlock. See INA 101\(b\)\(1\)\(D\) and 8 CFR 204.2\(d\)\(2\)\(iii\).](#) Evidence that can establish such a relationship includes (but is not limited to):

- Income tax returns;
- Medical or insurance records;
- School records;
- Correspondence between the parties; or
- Affidavits of friends, neighbors, school officials, or other associates knowledgeable about the relationship.

To prove the qualifying relative would take on the additional caregiving or income-earning responsibilities, the applicant needs to show that the qualifying relative either (1) is a parent of the child(ren) in question or (2) otherwise has the bona fide intent to assume those responsibilities. Evidence of such an intent could include (but is not limited to):

- Legal custody or guardianship of the child;
- Other legal obligation to take over parental responsibilities;
- Affidavit signed by qualifying relative to take over parental or other caregiving responsibilities; or
- Affidavits of friends, neighbors, school officials, or other associates knowledgeable about the qualifying relative's relationship with the children or intentions to assume parental or other caregiving responsibilities.

## F. Hypothetical Case Examples

Below are hypothetical cases that can help officers determine when cases present factors that rise to the level of extreme hardship. These hypotheticals are not meant to be exhaustive or all-inclusive with respect to the facts or scenarios that may be presented for adjudication and that may give rise to extreme hardship. Although a USCIS officer presented with similar scenarios as those presented in the hypotheticals could reasonably reach the same conclusions described below, extreme hardship determinations are made on a case-by case basis in the totality of the circumstances. An extreme hardship determination will always depend on the facts of each individual case.

For purposes of the following hypotheticals, it is assumed that:

- The applicant is inadmissible under a ground that may be waived based on a showing of extreme hardship to a qualifying relative spouse or parent. [\[21\]None of these examples involves a waiver authority where the child is a qualifying relative under the Immigration and Nationality Act \(INA\). For more on qualifying relatives, see Chapter 4, Qualifying Relative \[9 USCIS-PM B.4\].](#)
- The facts asserted in the hypotheticals are supported by appropriate documentation.

## Scenario 1

Tyler was admitted to the United States as a nonimmigrant 5 years ago. Three years after Tyler's entry, Tyler married Pat, a U.S. citizen spouse. Tyler seeks a waiver claiming that Pat would suffer extreme hardship if Tyler were denied admission to the United States.

Pat submits a credible, sworn statement indicating that if Tyler is refused admission, Pat would relocate to Tyler's native country. Tyler and Pat have been married for 2 years. Pat is a sales clerk. A similar job in the country of relocation would pay far less than Pat earns in the United States. In addition, although Pat has visited the country of relocation several times, Pat is not fluent in the country's language and lacks the ties that would facilitate employment opportunities and social and cultural integration.

Tyler is a skilled laborer who similarly would command a much lower salary in the country of relocation, but who was, prior to coming to the United States, gainfully employed. The couple is renting an apartment in the United States, does not own any real estate or other significant property, and has no children. Pat and Tyler do not have any other family, either in the United States or in the country of relocation.

### *Analysis of Scenario 1*

These facts alone generally would not favor a finding of extreme hardship. The hardships to Pat, even when aggregated, include only common consequences of relocation—economic loss and the social and cultural difficulties arising mainly from Pat’s inability to speak the language fluently.

## Scenario 2

The facts are the same as in Scenario 1 except that Pat (who is Tyler’s U.S. citizen spouse and would relocate) has a chronic medical condition requiring regular visits to the doctor, and Tyler is an unskilled worker who would command a much lower salary in the country of relocation. In addition, Pat has family that lives nearby and is a crucial part of Tyler’s support system. Pat and Tyler are also active members of their local community and have friends who often help out when Pat’s family is not available. Based on the care received from the doctor and the support received from family and friends, Pat is able to manage the chronic condition.

Pat submits a credible, sworn statement that Pat will relocate with Tyler despite Pat’s medical condition, and the evidence shows under the totality of the circumstances that Pat will relocate with Tyler. Pat’s doctor provides a statement that confirms that Pat will continue to progress and function well if Pat keeps receiving medical treatment and the support from family and other members of Pat’s existing social support network. While the doctor cannot fully attest to the availability of care in Tyler’s native country, the doctor is able to attest that moving to another country and disrupting Pat’s medical care and support network will cause Tyler significant difficulties. The doctor’s statement also states that Pat will likely not be able to work without the support system Pat has in the United States.

### *Analysis of Scenario 2*

These facts would generally favor a finding of extreme hardship. The aggregate hardships to Pat now include not only the economic losses, diminution of employment opportunities, and social, cultural, and linguistic difficulties (which are generally common consequences of relocation) but also the additional medical hardship that Pat would experience if Pat relocates to Tyler’s native country. The attestation of Pat’s doctor expressing concerns about the disruption in medical care, the effect of losing support from Pat’s family and social environment, and the possibility of Pat not being able to accept employment, would generally favor a finding of extreme hardship.

## Scenario 3

Assume the facts are the same as originally presented in Scenario 1 (without the additional facts from Scenario 2), but now with the added facts that Tyler also has LPR parents who live in the United States. Pat submits a credible, sworn statement indicating that Pat would relocate with Tyler and that Tyler’s LPR parents would remain in the United States. Again, when analyzing the additional evidence under the totality of the circumstances, the the evidence shows Pat will still relocate with Tyler.

Tyler and Pat both have a close relationship with Tyler's parents, who are elderly and non-native English speakers. Tyler regularly transports the parents to medical appointments, translates medical and other instructions, and offers them significant emotional support. As a result of the separation from Tyler and Tyler's spouse, Tyler's parents would suffer significant emotional hardship.

### *Analysis of Scenario 3*

Based on the totality of the evidence presented, the addition of these facts would generally favor a finding of extreme hardship. There are now 3 qualifying relatives (Tyler's U.S. citizen spouse and Tyler's two LPR parents). Although the aggregated hardships to Tyler's spouse alone (under Scenario 1) include only common consequences of a refusal of admission, aggregating those hardships with the hardships to Tyler's elderly parents, which include the potential disruption of their medical care, loss of ability to navigate their surroundings in English, and their significant emotional hardship resulting from the loss of their child's support, would generally tip the balance in favor of a finding of extreme hardship.

### **Scenario 4**

EF has lived continuously in the United States since entering without inspection 4 years ago. She has been married to GH, her U.S. citizen husband, for 2 years. EF seeks a waiver claiming that GH would suffer extreme hardship if EF were denied admission to the United States. GH has a moderate income, and EF works as a housecleaner for low wages. GH submits a credible, sworn statement that he would remain in the United States, and thus would separate from EF, if she is denied the waiver. Upon separating, the couple would lose the income EF earns. In addition to losing EF's income, GH is committed to sending remittances to EF once she leaves, in whatever amount GH can afford. EF and GH do not have children, and GH does not have family in the United States.

### *Analysis of Scenario 4*

These facts alone generally would not rise to the level of extreme hardship, even if the hardships to the qualifying relative are aggregated. The hardships to GH do not rise above the common consequences of separation and economic loss.

### **Scenario 5**

JK has lived continuously in the United States since entering without inspection 6 years ago. She married LM, her U.S. citizen husband, 2 years ago. JK seeks a waiver on the basis that LM would suffer extreme hardship if JK were denied admission to the United States. JK and LM live near LM's family and friends, and LM has spent little time traveling abroad. He does not speak the language of the country to which JK would return if she is denied admission, and LM's employment opportunities in that country would be less desirable than in the United States.



Additionally, DOS has issued a travel warning that strongly advises against travel to specific regions in the country to which JK would return, including the region where her family lives. The region-specific warning affirmatively recommends against non-essential travel to that region, citing the high rate of kidnapping and murder. LM submits a credible, sworn statement indicating that due to his recent marriage, the difficulties JK would face in her country, and his commitment to supporting her however possible, he would relocate to remain with JK if she is denied a waiver.

### *Analysis of Scenario 5*

The totality of these circumstances generally would favor a finding of extreme hardship, significantly in light of the nature and severity of the DOS travel warning. Although the other hardships present in the case are common consequences of relocation, LM has also demonstrated that he will return to the region of a country that is the subject of the DOS travel warning, which advises against non-essential travel to that region. The travel warning recommending against travel to that particular region of that country to which LM would relocate is a particularly significant factor that would often weigh heavily in support of a finding of extreme hardship. If the travel warning were less severe or only temporary, the warning would not qualify as a particularly significant factor but would be another factor to be considered in the totality of the circumstances by the officer.

Alternatively, in some circumstances where DOS has issued travel warnings with regard to a particular region of a country, the applicant and qualifying relative may relocate to a different region of the country that is not subject to a travel warning. In such a situation, the fact of the region-specific travel warning would not itself constitute a particularly significant factor; however, the hardships arising from relocating to another region of the country remains a factor to be considered and may result in a finding of extreme hardship, based on the totality of the circumstances. [\[221\]If the entire country is the subject of a travel warning that affirmatively recommends against travel or residence, the particularly significant factor will exist and would often weigh heavily in support of a finding of extreme hardship. For more on travel warnings, see Section E, Particularly Significant Factors, Subsection 4, DOS Travel Warnings \[9 USCIS-PM B.5\(E\)\(4\)\].](#)

### **Scenario 6**

OP has lived continuously in the United States since entering without inspection 7 years ago. After dating and living together for 5 years, OP married her same-sex partner SQ, a U.S. citizen. OP seeks a waiver claiming that SQ would suffer extreme hardship if OP were denied admission to the United States. SQ submits a credible, sworn statement indicating that she would remain in the United States and separate from OP if the waiver is denied.

SQ owns a business in the United States, and OP has continuously supported the business, including by helping out as an office manager. SQ would not be able to keep the business running successfully without OP because of the expense of hiring an office manager. In addition, the DOS country report indicates that women in OP's country of relocation generally may not work outside the home except in an extremely limited set of professions (such as teaching) for which OP is not qualified.

The country report also indicates that same-sex marriages are not recognized in that country, that same-sex sexual conduct is illegal, and that official societal discrimination and harassment (in some circumstances even giving rise to physical threats or harm) based on sexual orientation or gender identity is prevalent in many areas of life.

Based on these factors, SQ fears OP would be discriminated against and potentially be at risk of physical harm based on her sexual orientation. SQ has been in therapy due to depression and anxiety after she learned that her wife may be denied admission to the United States and that her wife would have to remain in a country where she risks discrimination and physical harm. The couple does not provide other evidence of hardship.

### *Analysis of Scenario 6*

These facts would generally favor a finding of extreme hardship. SQ would face serious economic detriment if OP is denied admission. In addition, the country reports show that SQ's marriage to OP would not be recognized in OP's native country, and that OP's marriage to a person of the same gender is a common cause for social ostracism, discrimination, and potential physical danger in OP's native country. The country reports further show that OP's access to education, employment and health care could be limited due to OP's sexual orientation and gender, thereby negatively affecting OP's subsistence.

SQ would face psychological trauma based on the fear that OP would be harassed or threatened because of her sexual orientation. SQ's trauma based on her fear that OP will be ostracized and persecuted in OP's native country based on her sexual orientation and gender are factors that in the totality of circumstances would ordinarily rise to the level of extreme hardship.

### **Scenario 7**

TU married his U.S. citizen wife, VW, 3 years ago. TU seeks a waiver on the ground that VW would suffer extreme hardship if TU were denied admission to the United States. Before becoming a U.S. citizen, VW and some members of her family fled persecution from her native country, and they were granted asylum in the United States. TU is of the same nationality. VW submits a credible, sworn statement that she would remain in the United States and separate from TU if the waiver is denied. The evidence also supports the conclusion that the return of TU to that country would cause VW particular anxiety and psychological stress, due both to the limitations on VW's ability to visit her husband and to the harm TU may face in the country of return due to his relationship to VW.

### *Analysis of Scenario 7*

These facts generally would favor a finding of extreme hardship. TU and VW are of the same nationality, and TU would return to the country from which VW fled. The fact that VW was previously granted asylum from the country of relocation is a particularly significant factor that would often weigh heavily in support of a finding of extreme hardship. The fact that VW and members of her family were previously granted asylum from the country of return shows that she is at risk of persecution if she were to return to that country to even visit her husband.

She has also submitted credible evidence indicating that she would suffer additional anxiety and psychological stress from the harm her husband may face due to his relationship with her and her family. The totality of these circumstances, including the particularly significant factor of VW's grant of asylum, would generally result in a finding of extreme hardship.

## **Scenario 8**

XY married her U.S. citizen husband, ZA, 9 years ago. XY seeks a waiver on the basis that ZA would suffer extreme hardship if XY were denied admission to the United States. XY and ZA have a 3-year old son and a 2-year old daughter. XY submits credible evidence showing that she is the primary caretaker of the children and that ZA is the primary income earner. His wages are not sufficient to pay for childcare and the couple does not have family that can provide childcare for the children.

ZA submits a credible, sworn statement indicating that he will remain in the United States with their children separated from XY if the waiver is denied. The evidence also indicates that XY will have very limited employment opportunities in the country of return because of her limited education. Whatever income XY will be able to earn in the country of return will be spent on her subsistence and will be insufficient to allow her to contribute to childcare or other family needs in the United States. Due to the lack of childcare options available to ZA, he will be required to become the sole caregiver of the children, while simultaneously striving to maintain his role as the family's sole income earner.

If ZA is unable to retain his job due to the assumption of primary caregiving responsibilities, he will lose the income necessary to support his children. The dual burden of being both the primary income earner and sole caregiver will create significant psychological, emotional, and financial stresses for ZA. Additionally, the evidence shows that the displacement of childcare would impact the emotional state and development of the children, which would require further care and attention on the part of ZA.

### *Analysis of Scenario 8*

These facts would generally favor a finding of extreme hardship. Although ZA's children are not qualifying relatives for purposes of demonstrating extreme hardship in this case, the hardship to ZA caused by becoming primarily responsible for the children's care, while maintaining his role as primary income earner, would implicate the particularly significant factor for substantial displacement of care of the applicant's children.

In this case, ZA and XY submitted credible evidence that XY cannot contribute to the family's needs, that ZA is unable to earn sufficient income for family needs if he must assume primary caregiving responsibilities, and that ZA otherwise lacks the resources or support network to replace either the primary caregiving responsibilities he would need to assume or the primary income-earning role that has been the source of the family's support.

The evidence also shows that the displacement of childcare would impact the children in a manner that would require additional care and attention by ZA and would thus further impact ZA's ability to care for his children. Absent other facts that diminish the impacts of the separation, this scenario would generally rise to the level of extreme hardship based on the totality of the circumstances.

Alternatively, this particularly significant factor may also be presented in a case where the applicant is the primary income earner and the qualifying relative is the primary caretaker of the children. If the applicant is refused admission, the qualifying relative could be required, depending on the circumstances, to take on the additional responsibilities of being the primary income earner in addition to continuing his or her role as primary caretaker.

In cases where this heightened responsibility would threaten the qualifying relative's ability to meet basic subsistence needs for the family, the significant emotional and psychological stress caused by the added burdens would often weigh heavily in support of a finding of extreme hardship. <sup>[23]</sup> [For more on substantial displacement of care, see Section E, Particularly Significant Factors, Subsection 5, Substantial Displacement of Care of Applicant's Children \[9 USCIS-PM B.5\(E\)\(5\)\].](#)

## Footnotes

1.

See [Matter of Cervantes-Gonzalez](#), 22 I&N Dec. 560 (BIA 1999), *aff'd*, [Cervantes-Gonzales v. INS](#), 244 F.3d 1001 (9th Cir. 2001). See [Matter of L-O-G-](#), 21 I&N Dec. 413 (BIA 1996). See [Matter of Anderson](#), 16 I&N Dec. 596 (BIA 1978).

2.

See [DOS Country Reports on Human Rights Practices](#) and [DOS Travel Warnings](#).

3.

See [Matter of Ngai](#), 19 I&N Dec. 245 (BIA 1984) ("Common results of the bar, such as separation, financial difficulties, etc. in themselves are insufficient to warrant approval of an application unless combined with much more extreme impacts").

4.

See [INA 240A\(b\)\(1\)\(D\)](#).

5.

See [Matter of O-J-O-](#), 21 I&N Dec. 381, 383 (BIA 1996).

6.

The characteristics for which a person is ostracized or stigmatized may be actual or perceived (that is, the person may actually have that characteristic, or someone may perceive the person as having that characteristic).

7.

The officer should consider any submitted government or nongovernmental reports on country conditions specified in the hardship claim. In the absence of any evidence submitted on country conditions, the officer may refer to DOS information on country conditions, such as [DOS Country Reports on Human Rights Practices](#) and the most recent [DOS Travel Warnings](#), to corroborate the claim.

8.

For more information on TPS, see the [USCIS website](#).

9.

See [5 U.S.C. 5928](#). See Department of State Danger Pay Regulations, available at [Standardized Regulations \(DSSR\)](#).

10.

See Section D, Examples of Factors that Might Support Finding of Extreme Hardship [[9 USCIS-PM B.5\(D\)](#)].

11.

See [8 CFR 103.2\(b\)\(1\)](#).

12.

See, for example, Division F, Title VI of the Omnibus Appropriations Act of 2009, [Pub. L. 111-8](#), 123 Stat. 524, 807 (March 11, 2009). See Section 1244 of the National Defense Authorization Act for Fiscal Year 2008, [Pub. L. 110-181](#), 122 Stat. 3, 396 (January 28, 2008). See Section 1059 of the National Defense Authorization Act for Fiscal Year 2006, [Pub. L. 109-163](#), 119 Stat. 3136, 3443 (January 6, 2006), as amended by [Pub. L. 110-36](#), 121 Stat. 227 (June 15, 2007).

13.

Although it is unlikely that a qualifying relative would have been granted withholding of removal under [INA 241\(b\)\(3\)](#) or withholding or deferral of removal under the Convention Against Torture (CAT), if a qualifying relative was previously granted such a form of relief, this would often weigh heavily in support of a finding of extreme hardship to that qualifying relative, similar to situations involving qualifying relatives described in this particularly significant factor.

14.

Federal agency programs focusing on individuals with disabilities generally rely on definitions found in their authorizing legislation. These definitions may be unique to an agency's program.

15.

See [10 U.S.C. 101](#). The term "armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

16.

See [DOS Travel Warnings](#).

17.

The term "child" includes those related to the applicant by birth, adoption, marriage, legal custody, or guardianship.

18.

In this scenario, the children are assumed to be under age 21. See [INA 101\(b\)\(1\)](#) and [INA 101\(c\)\(1\)](#).

19.

These scenarios are not exhaustive. For example, even when a qualifying relative is not the primary caretaker or breadwinner. Nonetheless, the loss of the applicant's contribution to caretaking or support may have consequences that rise to the level of extreme hardship to the qualifying relative based on the totality of the circumstances.

20.

USCIS applies a similar principle when assessing whether there is a bona fide relationship between a father and his child born out of wedlock. See [INA 101\(b\)\(1\)\(D\)](#) and [8 CFR 204.2\(d\)\(2\)\(iii\)](#).

21.

None of these examples involves a waiver authority where the child is a qualifying relative under the Immigration and Nationality Act (INA). For more on qualifying relatives, see Chapter 4, Qualifying Relative [[9 USCIS-PM B.4](#)].

22.

If the entire country is the subject of a travel warning that affirmatively recommends against travel or residence, the particularly significant factor will exist and would often weigh heavily in support of a finding of extreme hardship. For more on travel warnings, see Section E, Particularly Significant Factors, Subsection 4, DOS Travel Warnings [[9 USCIS-PM B.5\(E\)\(4\)](#)].

23.

For more on substantial displacement of care, see Section E, Particularly Significant Factors, Subsection 5, Substantial Displacement of Care of Applicant's Children [[9 USCIS-PM B.5\(E\)\(5\)](#)].

## Chapter 6 - Extreme Hardship Determinations

### A. Evidence

Most instructions to USCIS forms list the types of supporting evidence that applicants may submit with those forms. <sup>[1]</sup> [A waiver that requires a showing of extreme hardship to a qualifying relative is currently submitted on Form I-601, Application for Waiver of Grounds of Inadmissibility or Form I-601A, Application for Provisional Unlawful Presence Waiver.](#) The instructions to the relevant waiver forms describe some of the extreme hardship factors that may be considered, along with certain possible types of supporting evidence that may be submitted. USCIS accepts any type of probative evidence, including, but not limited to:

- Expert opinions;
- Medical or mental health documentation and evaluations by licensed professionals;

- Official documents, such as birth certificates, marriage certificates, adoption papers, paternity orders, orders of child support, and other court or official documents;
- Photographs;
- Evidence of employment or business ties, such as payroll records or tax statements;
- Bank records and other financial records;
- Membership records in community organizations, confirmation of volunteer activities, or records related to cultural affiliations;
- Newspaper articles and reports;
- Country reports from official and private organizations;
- Personal oral testimony; <sup>[2]</sup> An officer who interviews an applicant or other witness in person must place the witness under oath or affirmation before beginning the interview and must note in the record that the person was placed under oath along with the date and place of the interview. The officer should also take notes or record the testimony. and
- Affidavits, statements that are not notarized but are signed “under penalty of perjury” as permitted by 28 U.S.C. 1746, or letters from the applicant or any other person.

If the applicant indicates that certain relevant evidence is not available, the applicant must provide a reasonable explanation for the unavailability, along with available supporting documentation. <sup>[3]</sup> See 8 CFR 103.2(b). Depending on the country where the applicant is from, is being removed to, or resides, certain evidence may be unavailable. If the applicant alleges that documentary evidence such as a birth certificate is unavailable, the officer may consult the Department of State (DOS) Foreign Affairs Manual, <sup>[4]</sup> See the DOS website. when appropriate, to verify whether these particular documents are ordinarily unavailable in the relevant country. <sup>[5]</sup> See also DOS Bureau of Consular Affairs website for more information on birth certificates under reciprocity by country.

## B. Burden of Proof and Standard of Proof

AILA Doc. No. 16102107. (Posted 10/24/16)

The applicant bears the burden of proving that the qualifying relative would suffer extreme hardship. He or she must establish eligibility for a waiver by a preponderance of the evidence. <sup>[6]</sup> See *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010) (identifying preponderance of the evidence as the standard for immigration benefits generally, in that case naturalization). If the applicant submits relevant, probative, and credible evidence that leads the USCIS officer to believe that it is “more likely than not” that the assertion the applicant seeks to prove is true, then the applicant has satisfied the preponderance of the evidence standard of proof as to that assertion. <sup>[7]</sup> See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (preponderance of the evidence means more likely than not).

The mere assertion of extreme hardship alone does not establish a credible claim. Individuals applying for a waiver of inadmissibility should provide sufficient evidence to support and substantiate assertions of extreme hardship to the qualifying relative(s). Each assertion should be accompanied by evidence that substantively supports the claim absent a convincing explanation why the evidence is unavailable and could not reasonably be obtained. The officer should closely examine the evidence to ensure that it supports the applicant’s claim of hardship to the qualifying relative.

To illustrate, an applicant who claims that the qualifying relative has severe, ongoing medical problems will not likely be able to establish the existence of these problems without providing medical records documenting the qualifying relative’s condition. Officers cannot substitute their medical opinion for a medical professional’s opinion; instead the officer must rely on the expertise of reputable medical professionals.

A credible, detailed statement from a doctor may be more meaningful in establishing a claim than dozens of test results that are difficult for the officer to decipher. However, nothing in such a case changes the requirement that all evidence submitted by applicants should be considered to evaluate the totality of the circumstances.

Similarly, if the applicant claims that the qualifying relative will experience severe financial difficulties, the applicant will not likely be able to establish these difficulties without submitting financial documentation. This could include, but is not limited to, bank account statements, employment and income records, tax records, mortgage statements, leases, and proof of any other financial liabilities or earnings.

If not all of the required initial evidence has been submitted, or the officer determines that the totality of the evidence submitted does not meet the applicable standard of proof, the officer should issue a Request for Evidence (RFE) in accordance with USCIS policy.

In considering whether the applicant’s evidence is sufficient to meet the applicant’s burden of proof, the officer will consider whether the applicant has complied with applicable requirements to submit information and supporting documentation and whether the evidence is credible, persuasive, and refers to specific facts sufficient to demonstrate that the burden of proof has been satisfied and that applicant warrants a favorable exercise of discretion. In considering whether the applicant’s evidence is credible, the officer will consider the totality of the circumstances and all relevant factors and should take into account the inherent plausibility and internal and external consistency of the evidence and any inaccuracies or falsehoods in the evidence.

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If evidence in the record leads the officer to reasonably believe that undocumented assertions of the extreme hardship claim are true, the officer may accept the assertion as sufficient to support the extreme hardship claim. The preponderance of the evidence standard does not require any specific form of evidence; it requires the applicant to demonstrate only that it is more likely than not that the refusal of admission will result in extreme hardship to the qualifying relative(s). Any evidence that satisfies that test will suffice. <sup>[8]</sup> For more detailed guidance on how to interpret the requirement that the refusal of admission “would result in” extreme hardship to the qualifying relative, see Chapter 2, Extreme Hardship Policy, Section B, What is Extreme Hardship [9 USCIS-PM B.2(B)].

If the officer finds that the applicant has met the above burden of showing extreme hardship to one or more qualifying relatives, the officer should proceed to the discretionary determination. <sup>[9]</sup> See Chapter 7, Discretion [9 USCIS-PM B.7]. If the officer ultimately finds that the applicant has not met the above burden, the waiver application must be denied.

## Footnotes

1.

A waiver that requires a showing of extreme hardship to a qualifying relative is currently submitted on [Form I-601](#), Application for Waiver of Grounds of Inadmissibility or [Form I-601A](#), Application for Provisional Unlawful Presence Waiver.

2.

An officer who interviews an applicant or other witness in person must place the witness under oath or affirmation before beginning the interview and must note in the record that the person was placed under oath along with the date and place of the interview. The officer should also take notes or record the testimony.

3.

See [8 CFR 103.2\(b\)](#).

4.

See the [DOS website](#).

5.

See also [DOS Bureau of Consular Affairs website](#) for more information on birth certificates under reciprocity by country.

6.

See *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010) (identifying preponderance of the evidence as the standard for immigration benefits generally, in that case naturalization).

7.

See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (preponderance of the evidence means more likely than not).

8.

For more detailed guidance on how to interpret the requirement that the refusal of admission “would result in” extreme hardship to the qualifying relative, see Chapter 2, Extreme Hardship Policy, Section B, What is Extreme Hardship [[9 USCIS-PM B.2\(B\)](#)].

9.

See Chapter 7, Discretion [[9 USCIS-PM B.7](#)].

## Chapter 7 - Discretion

A finding of extreme hardship permits but never compels a favorable exercise of discretion. If the officer finds the requisite extreme hardship, the officer must then determine whether USCIS should grant the waiver as a matter of discretion based on an assessment of the positive and negative factors relevant to the exercise of discretion. The family relationships to U.S. citizens or lawful permanent residents and a finding of extreme hardship to one or more of those family members are significant positive factors to consider. <sup>[1]</sup> See [Matter of Mendez-Moralez, 21 I&N Dec. 296 \(BIA 1996\)](#).

For purposes of exercising discretion, a finding of extreme hardship that is sufficient to warrant a favorable exercise of discretion to grant a waiver of the unlawful presence grounds of inadmissibility may not be sufficient to warrant a favorable exercise of discretion with respect to crime- or fraud-related grounds of inadmissibility.

The conduct that triggered the applicant’s inadmissibility, such as a criminal conviction <sup>[2]</sup> [In cases where applicants who have been convicted of violent or dangerous crimes apply for waivers under INA 212\(h\)\(1\)\(B\) \[formerly INA 212\(h\)\(2\)\], discretion generally will not be favorably exercised unless either there are “extraordinary circumstances” \(for example those relating to national security or foreign policy\) or the applicant demonstrates “exceptional and extremely unusual hardship.” Depending on the gravity of the offense, even a showing of extraordinary circumstances does not guarantee a favorable exercise of discretion. See 8 CFR 212.7\(d\). or underlying fraud, <sup>\[3\]</sup> See \[INS v. Yueh-Shaio Yang, 519 U.S. 26, 30-32 \\(1996\\)\]\(#\). See \[Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 568-69 \\(BIA 1999\\)\]\(#\), \*aff’d\*, \[Cervantes-Gonzales v. INS, 244 F.3d 1001 \\(9th Cir. 2001\\)\]\(#\). is an important negative factor to consider. The officer should weigh all positive factors against all negative factors. Ultimately, if the positive factors outweigh the negative factors, the officer should approve the waiver; otherwise, the waiver should be denied.](#)

### Footnotes

1.

See [Matter of Mendez-Moralez, 21 I&N Dec. 296 \(BIA 1996\)](#).

2.

In cases where applicants who have been convicted of violent or dangerous crimes apply for waivers under [INA 212\(h\)\(1\)\(B\) \[formerly INA 212\(h\)\(2\)\]](#), discretion generally will not be favorably exercised unless either there are “extraordinary circumstances” (for example those relating to national security or foreign policy) or the applicant demonstrates “exceptional and extremely unusual hardship.” Depending on the gravity of the offense, even a showing of extraordinary circumstances does not guarantee a favorable exercise of discretion. See [8 CFR 212.7\(d\)](#).

3.

See [INS v. Yueh-Shaio Yang, 519 U.S. 26, 30-32 \(1996\)](#). See [Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 568-69 \(BIA 1999\)](#), *aff’d*, [Cervantes-Gonzales v. INS, 244 F.3d 1001 \(9th Cir. 2001\)](#).

# Updates

## **POLICY ALERT – Determining Extreme Hardship**

October 21, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance on determinations of extreme hardship to qualifying relatives as required by certain statutory waiver provisions. This guidance becomes effective December 5, 2016.