

What You Need to Know about Extreme Hardship Waivers

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Proving that your qualifying relative would suffer extreme hardship is a fundamental requirement for both I-601 and I-601A immigration waivers. So just what exactly constitutes extreme hardship? Simply put, extreme hardship is when your qualifying U.S. citizen(s) or permanent resident(s) would greatly suffer if the undocumented family member applying for the waiver were to be deported.

Surprisingly, you won't find any clear definition of extreme hardship under U.S. immigration law. But once you begin to grasp the concept of extreme hardship, it will become apparent about what is involved in making a persuasive and compelling argument for a hardship waiver. This article explains some of the critical factors you need to know about extreme hardship waivers.

Extreme Hardship Is Discretionary

One defining characteristic of extreme hardship is that it is a legal standard that is discretionary. For I-601 and I-601A immigration waiver cases, an Immigration Service judge or adjudicator attempts to make an informed decision as to whether or not you have established extreme hardship for your case. Effectively, "extreme hardship" is a determination by an Immigration Service judge or adjudicator that the possible deportation of an undocumented family member would constitute an extraordinary crisis for the citizen and permanent resident relatives involved.

Extreme Hardship Is a Case-by-Case Decision

The Board of Immigration Appeals has said that extreme hardship depends on the facts and circumstances of each particular case. Establishing extreme hardship and preparing a successful immigration waiver involves storytelling. To win approval of your waiver, I have to introduce you and your family's history, explain your particular family dynamics and personal circumstances, identify the likely mental health stressors and vulnerabilities involved, and explain how the denial of the waiver would constitute a major catastrophe for all those involved. And since each family is completely different, each immigration waiver will involve the unique circumstances of that case.

Factors for Determining Extreme Hardship

Rather than looking for a precise definition, extreme hardship is better understood as a series of factors. The regulations on suspension of deportation (8 C.F.R. 1240.58) list the following 14 relevant factors to examine when determining whether extreme hardship would result from a possible deportation:

1. The age of the undocumented immigrant, both at the time of entry to the United States and at the time of application for suspension of deportation.

2. The age, number, and immigration status of the undocumented immigrant's children and their ability to speak the native language and to adjust to life in the country of return.
3. The health condition of the undocumented immigrant or his or her children, spouse, or parents and the availability of any required medical treatment in the country to which the undocumented immigrant would have to rely on if returned.
4. The undocumented immigrant's ability to obtain employment in the country to which the undocumented immigrant would be returned.
5. The undocumented immigrant's length of residence in the United States.
6. The existence of other family members who are or will be legally residing in the U.S.
7. The financial impact of the undocumented immigrant's departure.
8. The impact of a disruption of educational opportunities.
9. The psychological impact of the undocumented immigrant's deportation.
10. The current political and economic conditions in the country to which the undocumented immigrant would be returned.
11. Family and other ties to the country to which the undocumented immigrant would be returned;
12. Contributions to and ties to a community in the United States, including the degree of integration into society.
13. Immigration history, including authorized residence in the United States.
14. The availability of other means of adjusting to permanent resident status.

This list is not exhaustive or in any way intended to cover all of the various forms of hardships that your family would face if your hardship waiver were denied. Rather than using this as a checklist, you should consider this list to be merely a few examples of the type of difficulties that an Immigration Judge or adjudicator would weigh in making an extreme hardship determination.

Keep in mind that *all* factors relevant to extreme hardship must be taken into consideration. Even if no single factor rises to the level of "extreme hardship," the cumulative effect of all the hardships could meet the standard. This is why it's essential to bring all factors to the attention of the adjudicator or judge, even if you think that the hardship doesn't seem to meet the "extreme hardship" standard.

Economic Hardship Is Insufficient

The denial of a waiver resulting in deportation would create a financial disaster for most waiver applicants and their families, but it is a mistake to focus solely or excessively on economic hardship. According to the Board of Immigration Appeals, financial difficulties alone may not rise to the level of extreme hardship. But economic hardship in conjunction with other impacts may, in the aggregate, establish extreme hardship.

Your Qualifying Relative

By statute, a hardship waiver requires persuasive evidence that your citizen or permanent resident relatives would greatly suffer if the undocumented family member was deported. Obviously, the negative impact of any deportation would most directly fall on the beneficiary of

the waiver who would be forced to leave the United States. Yet to meet the legal standard, hardship to the beneficiary of the hardship waiver should not be the sole focus of your documentation. Under U.S. immigration laws, the extreme hardship suffered by the beneficiary of the waiver is technically irrelevant. But any evidence of hardship to anyone should be documented. It is relevant as a matter of discretion and should be brought to the attention of the Immigration Service judge or adjudicator.

Explain Any Misdeeds

If the need for the hardship waiver is caused by a mistake or misdeed such as a criminal conviction, fraud, or immigration violations, the beneficiary of the hardship waiver should directly address these problems by describing what happened and, if necessary, taking full responsibility for his or her actions. Don't sugar coat what you've done wrong or try to gloss it over. The Immigration Service judge or adjudicator is making a discretionary decision where evidence of contrition and rehabilitation can play a role in whether or not the waiver is granted.

Two Key Perspectives of Extreme Hardship

It is important to explore the extreme hardship that would occur in two hypothetical possibilities:

1. If your hardship waiver were denied and you were deported back to your country origin, how would your qualifying relatives suffer if they remained in the United States without you?
2. What hardship would your qualifying relatives suffer if, after the hypothetical denial of your hardship waiver, they were forced to leave the United States to live with you abroad in your country of origin?

In closing, as the I have tried to explain, the road to successful hardship waiver is a difficult and complicated one. On one hand, never assume that you and your family's circumstances would simply meet the extreme hardship standards. On the other hand, many people who would like to apply for a hardship waiver believe that they will be unsuccessful and so they give up before they even begin. In short, try not to get distracted by anxieties about losing your case or about fears of being deported. Properly presented and argued, your I-601 or I-601A waiver is very likely to be granted.