

# **What You Need to Know About Extreme Hardship Immigration Waivers**

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Establishing extreme hardship is a fundamental requirement for both I-601 and I-601A immigration waivers. So just what exactly constitutes extreme hardship? 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 clear what you need to do to make a compelling argument for either a I-601 or I-601A hardship waiver. This article explains some of the critical factors you need to know about obtaining extreme hardship waivers.

## **Extreme Hardship Is Discretionary**

One defining characteristic of extreme hardship is that it is a legal standard that is completely discretionary. For I-601 and I-601A waiver cases, an Immigration Service judge or adjudicator makes a determination as to whether he or she thinks that you've established extreme hardship, which, again, is an ambiguous legal term. So effectively, "extreme hardship" is whatever the Immigration Service judge or adjudicator thinks it is under his or her discretionary authority.

## **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, you have to present your family's history, explain your particular personal circumstances and family relationships, and show how the denial of your waiver would negatively impact your family (especially your qualifying U.S. citizen relative). And since each family is completely different, each immigration waiver will have its own unique circumstances.

## **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 deportation:

1. The age of the alien, 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 alien's children and their ability to speak the native language and adjust to life in the country of return;
3. The health condition of the alien or the alien's children, spouse, or parents and the availability of any required medical treatment in the country to which the alien would be returned;
4. The alien's ability to obtain employment in the country to which the alien would be returned;
5. The alien'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 alien's departure;
8. The impact of a disruption of educational opportunities;
9. The psychological impact of the alien's deportation;
10. The current political and economic conditions in the country to which the alien would be returned;
11. Family and other ties to the country to which the alien would be returned;
12. Contributions 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; and
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 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 equities that an Immigration Service judge or adjudicator would weigh in making the 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 Immigration Service judge or adjudicator, 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 the economic hardship. According to the Board of Immigration Appeals, financial difficulties alone may not rise to the level of extreme hardship. However, economic hardship in conjunction with other adverse circumstances may establish extreme hardship.

### **“Extreme Hardship” Involves All Family Members**

By statute, a waiver requires persuasive evidence that the qualifying U. S. citizen relatives would suffer greatly if the immigrant applying for the waiver were deported. Obviously, the negative impact of any deportation would most directly fall on the applying immigrant if he or she would be forced to leave the United States. Yet to meet the legal standard, hardship on the applying immigrant cannot and should not be the sole focus of the hardship documentation.

Under U.S. immigration laws, the “extreme hardship” suffered by noncitizens is technically irrelevant. This is why evidence of hardship for everyone involved needs to be documented. Remember that, since all parties are connected in a family system, the adverse disposition of one family member will very likely affect the well being of other family members as well. In other words, the mutual impact of family suffering should be brought to the attention of the Immigration Service judge or adjudicator because the basis of determining hardship is

typically cumulative.

### **Explain Any Negative Equities**

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

### **Making Your Case Persuasive**

It is important to explore the extreme hardship that would occur in two hypothetical possibilities that might take place. The first is if the waiver was denied and the applying immigrant was deported back to his or her country of origin, how would the qualifying relatives suffer if they remained in the U.S. without this person? The second is what hardship would the qualifying family members suffer if, after the hypothetical denial of the waiver, they were forced to leave the U.S. to live abroad in the country to which the applying immigrant was deported to? The more these two perspectives can be clearly addressed and documented in a comprehensive manner, the more likely a Immigration Service judge or adjudicator will find your case persuasive.

### **The Road to Successful Waiver**

As I have tried to show, the road to successful waiver is not an easy one. Consequently, never just assume that you and your family's circumstances would meet the extreme hardship standard. However, many people who are faced with the I-601 or I-601A waiver problem believe that they will not be successful and give up before they even begin. So don't get intimidated by the fear of deportation or losing your case. While perseverance and tenacity are essential requirements for this journey, the most important one is that you be able to systematically document and argue your case according to the standards I have presented here. The more you and your representatives are able to do this, the more likely you will prevail in your efforts to obtain your immigration waiver.