U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27518418

Date: SEPT. 13, 2023

Appeal of Boston, Massachusetts Field Office Decision

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

The Applicant, a national of Haiti, seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), to adjust status to that of a lawful permanent resident. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver, in part, if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Boston, Massachusetts Field Office denied the waiver request, concluding that the Applicant was inadmissible for having been convicted of a crime involving moral turpitude (CIMT) and did not establish, as required, that refusal of admission would result in extreme hardship to his qualifying relatives and that a waiver would otherwise be warranted in the exercise of discretion. The matter is now before us on appeal.

On appeal, the Applicant submits a brief with a copy of a joint income tax return, and asserts that the Director failed to properly analyze and credit the extensive evidence of the hardships to his relatives, as well as his own worthiness for discretionary relief.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Any noncitizen convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a CIMT (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. Section 212(a)(2)(A)(i) of the Act. Noncitizens who are inadmissible on this ground may seek a discretionary waiver of inadmissibility under section 212(h) of the Act.

Where the activities resulting in inadmissibility occurred more than 15 years before the date of the application, a discretionary waiver is available if admission to the United States would not be contrary

to the national welfare, safety, or security of the United States and the noncitizen has been rehabilitated. Section 212(h)(1)(A) of the Act. A waiver is also available if denial of admission would result in extreme hardship to the noncitizen's U.S. citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act.

A noncitizen who satisfies the substantive requirements for a waiver under either section must also demonstrate that USCIS should exercise its discretion favorably and grant the waiver.

II. ANALYSIS

The record reflects that in [redacted] 2008 the Applicant was arrested and charged with "indecent assault and battery on person fourteen or older" in violation of Massachusetts General Laws (Mass. Gen. Laws) ch. 265 § 13H. The judge accepted the Applicant's admission to the facts underlying the charge and found that those facts were sufficient to support a conviction. The judge then placed the Applicant on probation, and ordered him to complete community service, pay probation and legal fees, and have no contact with the victim.

The Applicant does not dispute that he was convicted of this offense for immigration purposes,[1] or that it is a CIMT. The issues on appeal are whether the Applicant has established the requisite extreme hardship to his qualifying relatives[2] and, if so, whether he has shown that he merits a favorable exercise of discretion.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered "extreme," the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were the "common result of deportation" and did not alone constitute extreme hardship). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant and 2) if the qualifying relative relocates overseas with the applicant. *See generally* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual (providing guidance on the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both of these scenarios is not required if an applicant's evidence establishes that one of these scenarios would result from the denial of the waiver. *See id.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Gonzalez Recinas*, 23 I&N Dec. 467 (BIA 2002)). The applicant may meet this burden by submitting a statement

[1] A conviction exists for immigration purposes, in part, where an individual has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and the judge has ordered some form of punishment, penalty, or restraint on the individual's liberty. Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A).

[2] The Applicant has not claimed eligibility for a rehabilitation waiver under section 212(h)(1)(A) of the Act and, because the Director made no findings on this issue, we decline to address it on appeal as an initial matter.

from the qualifying relative or relatives certifying under penalty of perjury that the qualifying relative or relatives would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. *See id.* Here, the record does not contain a clear statement from the Applicant's U.S. citizen spouse or mother indicating whether they intend to remain in the United States or relocate with the Applicant to Haiti or any another country if the waiver application is denied. The Applicant must therefore establish that if he is denied admission, one or more of his relatives would experience extreme hardship both upon separation and relocation.

The Applicant and his spouse have been married since 2018, and have two children who were born in the United States in 2009 and 2013. With his waiver request the Applicant previously submitted an affidavit from his spouse, who stated that she was the breadwinner for the family and the Applicant was a homemaker and childcare provider. The spouse explained that this arrangement allowed her to earn $35,000 a year working full time (including overtime), cover the household monthly expenses of $2,450, and to send approximately $600 each month to support her mother and six siblings in Haiti. She further stated that she also sent money to the Applicant's brother in Haiti on a quarterly basis; without the Applicant's help she would not be able to send money to Haiti, and would have to "spend this money for childcare and home care so that [she] could continue to work full time." The spouse stated that she and other family members would be emotionally devastated knowing that if the Applicant were to return to Haiti he would be exposed to terrible conditions, including poverty, violence, dire environmental problems, and extremely poor health care and education systems. The Applicant's mother, in turn, stated that she was unemployed and in poor health, that the Applicant was her "primary support system," and that losing this support and watching her grandchildren grow up without their father would be emotionally devastating. She explained that she suffered from diabetes, high blood pressure, high cholesterol, and the Applicant, who lived "five miles away" checked on her daily to make sure she had the things she needed and to ensure she attended all her medical appointments. She also indicated that she had ongoing problems with her eyes, and was facing eye surgery. In support of these statements the Applicant submitted evidence including copies of his spouse's earning statements from May through June 2022, a bank statement for the period from April to May 2022, family photographs, and a 2022 letter from his mother's physician stating that the mother suffered from multiple serious and severe chronic medical conditions for which she had to take numerous medications. The physician further stated that because of her underlying medical conditions the mother was unable to take care of herself on a day to day basis, and it was medically recommended that the Applicant stays in the United States to help her with her activities and care. The record below also contained a letter from the mother's physician dated in January 2010, confirming that he had been treating her for the past 12 years and that she suffered from diabetes mellitus, hypertension and hypercholesterolemia, as well as a letter confirming that in February 2011 the mother underwent laser treatment for macular edema in her left eye.

The Director determined that this evidence was not sufficient to show that the Applicant's qualifying relatives – his spouse, mother, and children – would suffer extreme hardship if the waiver is not granted. Specifically, the Director noted that the physician's statement concerning the mother's inability to take care of herself was not consistent with USCIS records, which indicated that she traveled to Haiti at least eight times in the past few years, and some of her trips lasted several months. The Director also pointed out that the physician did not explain from what medical conditions the mother was suffering, and the only documentation of her health issues were the 2010 and 2011 letters. And, as Applicant did not provide evidence that he was visiting his mother daily or was her only or

primary caretaker, the Director found that the Applicant did not show that his mother needed his daily assistance. The Director further found that the limited bank account information, reflecting mostly expenses for gas and meals, was inadequate to show that his spouse would experience financial hardship in the Applicant's absence, and noted that the spouse traveled overseas without the Applicant after they were married. Consequently, the Director determined that the Applicant did not demonstrate the requisite extreme hardship to his qualifying relatives. The Applicant has not overcome this determination on appeal.

On appeal, the Applicant submits a copy of his and his spouse's 2022 joint federal income tax return, which reflects a reported joint income of $73,806. He asserts that the Director did not fully analyze and undervalued the claimed hardships to each of his four qualifying relatives. The Applicant states that his spouse detailed in her affidavit the family's finances including her income and expenses. He claims that these statements establish that without him the family would be deprived of its primary homemaker and the financial burden on his spouse would increase, as she would have to provide a second home for him in Haiti in order for him to have a safe place to live. The Applicant further states that he also sufficiently documented the hardship to his children through the submission of affidavits from his spouse and mother, both of whom attested to his integral role as a homemaker and childcare provider, which enables his spouse to work. He reiterates that his spouse continues to send money to her family in Haiti and that she depends on him as a homemaker to be able to work full-time and help her relatives, who rely on her for financial survival. The Applicant avers that he also adequately documented the hardship to his mother, as his mother previously testified to her dependence on him and to the extreme hardship expected if he were no longer there for her. Lastly, he states that his U.S. citizen mother's and spouse's travel to Haiti is not relevant to their hardships, because they were able to visit the country temporarily and return to the safety of the United States, while he would have to permanently remain in Haiti and face harsh conditions if his waiver request is not approved.

We acknowledge the Applicant's statements, but conclude that the record remains insufficient to establish that the claimed emotional, medical, and emotional hardships to his qualifying relatives would go beyond the common results of deportation or removal.

As an initial matter, the mere assertion of extreme hardship does not establish a credible claim. *See generally* 9 *USCIS Policy Manual, supra,* at B.6(B). Rather, 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. *Id.* Here, the spouse's earnings statements, the single bank account statement, and the 2022 income tax return do not support a conclusion that the spouse will suffer extreme economic hardship in the Applicant's absence, as they neither provide a complete picture of the family's financial situation, nor substantiate the spouse's claim of the family's monthly financial obligations. Moreover, the Applicant indicates on appeal that he recently started working; however, as he does not explain whether he is employed on a full-time or part-time basis, the extent to which his spouse relies on his help with housework and childcare is not clear. Lastly, the Applicant has not demonstrated that he will not be able to find employment or support himself in Haiti, and he has not explained whether he may be able to live there with his brother or other family members. Thus, while we recognize that the Applicant's spouse may experience some financial difficulties if she must pay for childcare in addition to her current expenses, the evidence remains insufficient to show that the resulting economic hardship to the spouse will be extreme.

The Applicant also has not demonstrated extreme medical hardship to his mother. Although the previously provided documents indicate that she has been treated for various conditions since at least 1998, the Applicant has not shown that those conditions have worsened, or that his mother relies on him for assistance with daily tasks. Rather, it appears that she does not currently reside with the Applicant and his family, and her own statements indicate that she lives elsewhere and the Applicant visits her daily. This, and the fact that the mother has traveled abroad on several occasions in recent years, raises questions about the physician's statement that she is unable to take care of herself. As the Applicant does not submit any other evidence to show his mother's current health conditions and their effect on her ability to live and function independently, the record does not establish the extent to which the Applicant's mother relies on his assistance in performing daily tasks and managing her health issues. The evidence therefore remains insufficient to show that the Applicant's mother would suffer a health-related hardship upon separation from him.

Regarding the emotional hardship to the Applicant's children, we recognize that they, as well as his other qualifying relatives, will face challenges if the Applicant is not in the United States. Nevertheless, emotional hardship is a common consequence of family separation and, while we acknowledge that the conditions in Haiti are adverse, the Applicant has not shown that there are circumstances that may elevate the emotional impact on his children, spouse, and mother to extreme if they remain in the United States without him.

Based on the above, we conclude that the Applicant has not met his burden of proof to show that the claimed emotional, financial, and medical hardships to his qualifying relatives, considered individually and cumulatively, would exceed those which are usual or expected if they remain in the United States and are separated from the Applicant. As stated, the Applicant must establish that denial of the waiver application will result in extreme hardship to a qualifying relative or relatives upon both separation and relocation. Because the Applicant has not demonstrated such hardship in the event of separation, we cannot conclude that the requisite extreme hardship would actually result from denial of his waiver application.[3]

As the Applicant has not demonstrated extreme hardship to one or more of his qualifying relatives if he is refused admission, we need not consider at this time whether he merits a waiver in the exercise of discretion, and reserve the issue. The waiver application will remain denied.

ORDER: The appeal is dismissed.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).