U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17570712

Date: APR. 18, 2022

Appeal of San Francisco, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The Director of the San Francisco Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's qualifying relative, his U.S. citizen spouse, would experience extreme hardship if the Applicant were denied the waiver. The matter is now before us on appeal.[1]

On appeal, the Applicant submits additional evidence and maintains that his spouse would experience extreme hardship if the waiver were denied. 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 remand the matter to the Director for the entry of a new decision.

I. LAW

Any noncitizen who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act. This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered "extreme," the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as

[1] We note that, after filing the present appeal in February 2021, the Applicant filed another waiver application in March 2021, with receipt number [redacted]. The newer waiver application remains pending, and therefore it is not before us on appeal.

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). In these proceedings, it is the applicant's burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant acknowledges that he is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willfully misrepresenting a material fact, because he used a passport containing false information to enter the United States. He seeks a waiver of this ground of inadmissibility. The issue on appeal is whether the Applicant has demonstrated that his qualifying relatives, his spouse, would experience extreme hardship upon denial of the waiver. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relatives remain in the United States separated from the applicant and 2) if the qualifying relatives relocate overseas with the applicant. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (providing, as guidance, the scenarios to consider in making extreme hardship determinations). The Applicant's spouse states: "I have to stay in the United States," which appears to be a declaration that she will remain in the United States rather than relocate. We note, however, that the Applicant contends that extreme hardship would result whether he separated from his spouse, or she accompanied him abroad.

On appeal, the Applicant submits updated statements from himself and his spouse; a new affidavit from a clinical psychologist; and country condition information about China. The new evidence is material to the Applicant's claims of financial and emotional hardship. The Applicant's spouse states that she lost her hotel housekeeping position as a result of the pandemic. A psychiatric evaluation submitted on appeal offers greater detail regarding potential emotional hardship claims. Because this information was not available to the Director at the time of the denial of the waiver application (and some of the information reflects circumstances, such as employment, that have changed since that decision), it is appropriate to remand the matter so that the Director can make the initial determination about the significance and weight of the new evidence.

The Applicant must establish by a preponderance of the evidence that denial of the waiver application would result in extreme hardship to a qualifying relative both upon separation and relocation. Section 212(a)(9)(B)(v) of the Act; *Chawathe*, 25 I&N Dec. at 375; *see also* 9 USCIS Policy Manual B.4(B), (providing, as guidance, the scenarios to consider in making extreme hardship determinations).

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.