U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16652906

Date: FEB. 9, 2022

Appeal of Denver, Colorado Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant 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 Denver, Colorado Field Office denied the application, concluding that the record did not establish that the Applicant's spouse, who is a U.S. citizen, would experience extreme hardship if the waiver was not granted. The Director dismissed subsequent combined motions to reopen and reconsider. On appeal, the Applicant asserts that the Director failed to appropriately examine the evidence provided.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. 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 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).

II. ANALYSIS

The issues on appeal are whether the Applicant is inadmissible for willful misrepresentation and whether she has demonstrated her U.S. citizen spouse would suffer extreme hardship upon denial of the waiver.

A. Inadmissibility

The Applicant contends she is not inadmissible because she did not willfully misrepresent a material fact. The Applicant was found inadmissible for participation in a scheme that sought to procure work authorization through fraudulently filed asylum applications. She claims that she was unaware that the preparer that she paid filed an asylum application on her behalf, and that aside from paying the preparer, "[she] did not act at all." However, USCIS records indicate that the Applicant received a notice from USCIS notifying her that her asylum application had been received, and that she applied for an employment authorization document based on the asylum application. Notably, the record indicates that the Applicant signed the employment authorization application. Because USCIS applications are signed "under penalty of perjury," an applicant, by signing and submitting the application or materials submitted with the application, is attesting that their claims are truthful. *See* 8 *USCIS Policy Manual* J.3(D)(1), https://www.usicis.gov/policymanual. The Applicant's signature on this application "establishes a strong presumption" that she knew and assented to the contents. *Matter of A.J. Valdez*, 27 I&N Dec. 496, 499 (BIA 2018). Such a presumption can be rebutted through evidence that an applicant was misled and deceived by their representative when preparing the application. *Id.* The Applicant has not submitted evidence to support her claim that she was misled by the individual who prepared the applications, and the record does not establish that she was unaware of the misrepresentations. Accordingly, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking an immigration benefit through fraud or misrepresentation and requires a waiver of inadmissibility.

B. Extreme Hardship

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case her U.S. citizen spouse. 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. Demonstrating extreme hardship under both scenarios is not required if an applicant's evidence establishes that one of these scenarios 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 with the Applicant, or would remain in the United States, if the Applicant is denied admission. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual.

In the present case, the record does not establish whether the Applicant's spouse intends to remain in the United States or relocate to Thailand if the Applicant's waiver application is denied. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

The record includes numerous financial statements, notes from the Applicant's spouse's psychologist, statements of support from friends and family, and reports on the conditions of Thailand.

Regarding emotional and medical hardship, the Applicant's spouse claims that he has struggled with depression in the past and has abused alcohol at those times, and this is corroborated by the evaluation of his psychologist. This evaluation does, however, note that the Applicant's spouse is not currently diagnosed with depression. Additionally, the record does not contain contemporaneous documentation or medical records regarding the Applicant's spouse's previous struggles with substance abuse or depression. While this evaluation cautions that the Applicant's spouse could experience a recurrence of depression if he is separated from the Applicant, the evaluation also noted that the Applicant's spouse was briefly depressed while married to the Applicant due to a failed business venture. While the Applicant's spouse claims that the Applicant's emotional support has helped him to overcome depression and substance abuse, the record does not specify how the Applicant aided her spouse or how her absence would harm her spouse's mental health. Otherwise, the included evaluation notes that the Applicant and her spouse are in a caring, affectionate marriage and that it would be difficult to maintain the level of intimacy that they have if they were to be separated. While we are sympathetic to the emotional hardships that would result in the Applicant's separation from her spouse, the record does not reflect that these hardships would be beyond the common results of removal or inadmissibility. The record does not show that the Applicant's spouse has any physical or mental health issues that affect his ability to work or carry out other activities, or that he requires the Applicant's assistance as a result. In addition, there is no indication that other family members are unable or unwilling to provide emotional support to the Applicant's spouse, as needed. The record indicates that the Applicant's spouse lives near family members and has strong community ties to his home in Colorado.

Regarding financial hardship, the Applicant claims that her spouse will suffer severe financial hardship if she were to leave the country, as her income provides nearly half of their budget and they have many debts, including a home they recently purchased. The Applicant's spouse also claims to have been furloughed in 2020, but the documentation provided from April of 2020 indicates that this furlough was a 30-day temporary furlough and the instant appeal filed in November of 2020 does not elaborate on the status of this furlough. The Applicant's spouse works only part time as his job involves physical labor and he fears injury, but the record does not corroborate that her spouse would be at particular risk of injury if he worked full-time. A statement from the mother of the Applicant's spouse indicates that her son has completed an associate's degree, and a statement from the Applicant's spouse indicates his "certified field" is in accounting. In sum, the record does not demonstrate that the Applicant's spouse would be unable to increase the number of hours he works, seek other employment based on the degree he completed, reduce his expenses, or call upon family for assistance.

Although we recognize that the Applicant's spouse may face some hardships upon separation, based on the record, we cannot conclude that when considered in the aggregate, the hardship would go beyond the common results of separation from a loved one and rise to the level of extreme hardship.

The Applicant must establish that denial of the waiver application would result in extreme hardship to a qualifying relative both upon separation and relocation. As the Applicant has not established extreme hardship to her spouse in the event of separation, we cannot conclude she has met this requirement.

ORDER: The appeal is dismissed.