U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20267064

Date: JAN. 31, 2022

Appeal of San Bernardino, California 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), for a willful misrepresentation of a material fact.

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. There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. If the noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. Section 212(i) of the Act. On appeal, the Applicant does not contest the inadmissibility determination made by the Director.

The Director of the San Bernardino, California Field Office denied the waiver, concluding the Applicant did not establish extreme hardship to his United States citizen spouse, his only qualifying relative, because of his continued inadmissibility. The matter is now before us on appeal. On appeal, the Applicant contends the Director erred in concluding that his spouse would not experience extreme hardship upon his separation and their relocation to Mexico.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

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). 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).

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. Section 212(a)(9)(B)(v) of the Act. 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). Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates 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 Recinas*, 23 I&N Dec. 467 (BIA 2002)). 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. *See id.*

In the present case, the record contains no clear statement from the Applicant's spouse indicating her intent to remain in the United States or relocate to Mexico if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his qualifying spouse would experience extreme hardship both upon separation and relocation. Because the Applicant has not demonstrated that his spouse would face extreme hardship if he separated from her to Mexico, as detailed below, we do not need to consider the difficulties she would face if she relocated with him to Mexico.

The Director concluded the submitted hardship evidence did not demonstrate that the Applicant's spouse would experience extreme hardship upon their separation. The Director indicated that although the circumstances of the Applicant's potential separation appeared difficult, they did not rise to the level of extreme hardship required by applicable law and policy. For instance, the Director determined that the disruption of the Applicant and qualifying spouse's family unit, including their four daughters, was not sufficient to establish extreme hardship upon separation, including their daughters' plans to complete college educations.

On appeal, the Applicant contends the Director did not correctly consider the hardships the qualifying spouse would face in the aggregate. The Applicant asserts the Director ignored hardships the qualifying spouse would experience if her husband was separated to Mexico, including the qualifying spouse becoming the primary income earner for the family at 51-years-old, as well as continuing to be the sole caretaker of his two high school age stepdaughters. The Applicant further emphasizes the psychological impact the separation of the Applicant would have on the qualifying spouse, pointing to a Department of State (DOS) travel advisory in place for Mexico. The Applicant further emphasizes potential danger the qualifying spouse and their daughters would face when they visited him in Mexico. The Applicant further asserts that the qualifying spouse would experience emotional hardship resulting from educational opportunities their daughters would lose, since they would lose the financial support of the Applicant upon separation. The Applicant also states the qualifying spouse would "likely lose her home" and face "a significant reduction in…standard of living" upon the Applicant's separation.

We affirm the Director's decision that the Applicant has not shown his spouse would experience extreme hardship upon his separation to Mexico. The submitted evidence, when considered in the aggregate, does not demonstrate hardship rising beyond the common results of removal to the level of extreme hardship. Although we acknowledge the emotional, financial, and other concerns that separation could cause for the qualifying spouse, the record lacks specificity and supporting documentation concerning the Applicant's assertions of hardship.

As discussed, the Applicant points to financial hardship the qualifying spouse would experience if he was separated to Mexico. For instance, the Applicant states that the qualifying spouse would be forced to become the primary income earner for the household. The Applicant indicates that he works two jobs and earns "more than 50% of the income." He also asserts that their daughters, whom he supports, would lose opportunities to complete college educations and the qualifying spouse would lose their home. However, the Applicant submits insufficient evidence to evaluate the financial impact of the Applicant's potential separation.

For example, the Applicant provides no clear explanation of the family's finances, such as their income, expenses, mortgage payments, college tuition payments, and jobs they held as of the date the application was filed. The Applicant only vaguely indicates that he works two jobs, supports his family, and earns more than 50% of the family's income; but he provides insufficient evidence to establish a specific picture of the family's finances. To illustrate, the Applicant emphasizes on appeal that his wife would have to become the primary wage earner for the family, but he does not explain what income would be lost from his separation. This lack of detail and evidence is particularly noteworthy since the Applicant's statements suggest that the qualifying spouse contributes to the family income, but the record does not reflect to what extent. The Applicant also does not explain why they would not be able to support their daughters in their educational pursuits upon his separation, such as by explaining the current and projected cost of their educations or documenting how their financial situation would change in the Applicant's absence from the United States. This lack of detail and evidence is notable since only one of the qualifying spouse's four daughters was a minor, or 16-years-old, when the application was filed, leaving uncertainty as to the financial burden the qualifying spouse would experience as the claimed sole income earner upon the Applicant's separation. Furthermore, the Applicant does not explain why he would not be able to work in Mexico and continue to provide support for this family.

Likewise, the Applicant does not sufficiently explain or document why the qualifying spouse would be "likely" to lose her home if her spouse was separated to Mexico. Again, the record contains insufficient evidence of the Applicant and his qualifying spouse's finances, including their asserted mortgage payment, and it does not indicate why they would not be able to afford their mortgage upon separation. The Applicant submitted a change of ownership document and deed related to the property which contain no indication that there is a mortgage or lien on their property. If such a loan exists, the record does not demonstrate the amount of their monthly mortgage payment.

Furthermore, as noted above, the Applicant does not explain why he would not be able to work in Mexico and continue to provide support for this family. The Applicant does not discuss in detail where he would relocate in Mexico, beyond mentioning that he was originally from [redacted] state, nor does he describe the specific circumstances or potential economic opportunities he would experience

upon separating to Mexico. Therefore, in sum, the Applicant did not sufficiently explain and document the claimed financial hardships the qualifying spouse would experience upon his separation to Mexico.

The Applicant further emphasizes the psychological impact of him being separated to Mexico on the qualifying spouse, a country and region subject to DOS travel advisories. We acknowledge that there is a general DOS travel advisory in place for Mexico, indicating that potential visitors "reconsider travel." However, as noted, the Applicant does not clearly discuss his intentions regarding separation to Mexico, such as where he plans to live, beyond vaguely indicating that he originally came to the United States from [redacted] state, Mexico. However, assuming the Applicant was to live in [redacted] state, the potential danger he would face there is not made sufficiently clear, particularly since the DOS travel advisory points to limited areas that U.S. government employees should not travel, leaving several other major metropolitan areas without such travel restrictions.[1]

Therefore, without more detail and evidence as to the Applicant's potential circumstances in Mexico, it is difficult to assess the level of danger he would face there, or the potential danger that would be experienced by the qualifying spouse and their daughters in visiting him. Likewise, without more clarity as to the Applicant's planned circumstances in Mexico, the possible psychological impact on the qualifying spouse is not clear, beyond likely psychological hardships faced by all spouses and families upon separation. The qualifying spouse does not explain in detail the asserted psychological impacts she would experience in her submitted statement, but only expressed typical hardships faced by all families in separation, including her love for her husband and the disruption to the family's functioning the Applicant's separation would cause. Although we acknowledge these unfortunate hardships, extreme hardship requires that exceeding which is usual or expected, or difficulty beyond that explained by the qualifying spouse. *See Matter of Pilch*, 21 I&N Dec. at 630-31.

The Applicant's assertion that the Director failed to consider the hardships to the qualifying relative in the aggregate is misplaced. The decision specifically states that the Director weighed all the evidence, including the hardship factors, and the Director cited cases such as *Matter of Ige*, 20 I&N Dec. at 880, and *Matter of O-J-O-*, 21 I&N Dec. 381 (BIA 1996), indicating that he considered the entire range of factors concerning hardship in the aggregate. In sum, in considering the hardship claims individually and cumulatively, the Applicant has not overcome the deficiencies in the record

[1] The DOS travel advisory states that U.S. government employees should not travel within 12 miles of the [redacted] Michoacán border, on Federal Highway 80 south of Cocula, and on State Highway 544 between Mascota and San Sebastian del Oeste, but further indicates that there are no restrictions on travel for U.S government employees to Guadalajara Metropolitan Area, Puerto Vallarta (including neighboring Riviera Nayarit), Chapala, and Ajijic. Mexico Travel Advisory, [redacted] State, U.S. Dep't of State- Bureau of Consular Affairs, https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Mexico.html#[redacted]%20state (last visited Jan. 28, 2022).

as articulated by the Director and we affirm the conclusion that the Applicant has not shown his spouse would experience extreme hardship due to his being separated from her to Mexico.

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). As the Applicant has not established extreme hardship to his spouse in the event of his separation, we cannot conclude he has met this requirement.

ORDER: The appeal is dismissed.