U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19993151

Date: JAN. 31, 2022

Appeal of Tucson, Arizona 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 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 Tucson, Arizona 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 that 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.

As discussed, the Director concluded that the submitted hardship evidence did not demonstrate the Applicant's spouse would experience extreme hardship upon their separation. Specifically, the Director indicated that although the submitted evidence indicated the Applicant and qualifying spouse's son had received treatment for delayed speech and a development issue affecting his motor skills and walking ability, this did not reflect extreme hardship that would result from the Applicant's separation. Further, the Director discussed the qualifying spouse's asserted anxiety and depression, noting that she denied suffering from these conditions in medical appointments in 2018. The Director also stated that the qualifying spouse's claimed anxiety and depression appeared to be due to the Applicant's potential separation and not related to an underlying condition. Further, the Director explained that the Applicant did not sufficiently document the family's financial situation to determine if the qualifying spouse would face extreme hardship in the event of his separation.

On appeal, the Applicant contends that the Director did not correctly consider the hardships the qualifying spouse would face in the aggregate. The Applicant asserts the Director did not sufficiently consider evidence of the qualifying spouse's psychological hardship that would result from the Applicant's separation. The Applicant states that the qualifying spouse, and their son, are completely reliant on the Applicant for care and support. The Applicant further points to a "delay milestone" their son suffers from affecting his motor function and walking ability and indicates that he receives therapy for this condition. The Applicant also emphasizes his qualifying spouse's medical records, specifically that she has suffered from symptomatic cholelithiasis, or "hard, crystal-like deposits that can form in the gallbladder."

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, medical, and other concerns that separation could cause for the qualifying spouse, the record lacks specificity and supporting documentation concerning the Applicant's assertions of extreme hardship.

As discussed, the Applicant contends that the Director did not sufficiently consider evidence of the qualifying spouse's psychological hardship she would experience upon his separation. However, the Applicant has not sufficiently articulated the nature of the qualifying spouse's asserted psychological condition and how it would be made substantially worse by the Applicant's separation to Mexico. In her statement, the qualifying spouse stated she was diagnosed with anxiety and depression resulting from the death of her mother, a miscarriage she experienced in 2016, the immigration process, and her mother in law's recent death. The Applicant provided a medical report from December 2020 reflecting that the qualifying spouse was diagnosed for depression, and prescribed medication for depression and to deal with "breakthrough anxiety."

Although we acknowledge the hardship faced by the qualifying spouse in dealing with her depression and anxiety, the severity of these conditions and the frequency of the care required to treat them are not sufficiently articulated or documented, nor is the projected impact of the Applicant's separation on this condition. There is no indication as to how the qualifying spouse has responded to her prescribed medications, and the provided psychological documentation does not discuss the full nature of the qualifying spouse's condition. Further, the record does not establish that she requires the regular care of the Applicant for these conditions or how her depression and anxiety would be made worse by the Applicant's separation.

In addition, on appeal, the Applicant emphasizes a development "delay milestone" his, and the qualifying spouse's, son suffers from affecting his speech, motor function, and ability to walk, and indicates that he receives therapy for these issues. The Applicant provides substantial medical and therapy documentation on appeal reflecting the nature of this developmental issue and the therapy their son receives. However, the Applicant does not articulate how their son's condition would worsen or how his treatment would be disrupted if the Applicant was separated from the qualifying spouse. There is also no indication how often their son's therapy takes place or specifically how their son's condition and therapy affect the qualifying spouse. There is no indication from the submitted evidence that their son could not continue his therapy and progress in his father's absence. In fact, the submitted evidence reflects that the qualifying spouse received a certificate in physical therapy from [redacted] College in 2016, appearing to leave her particularly well placed to support their son's therapy for his developmental conditions. In sum, the Applicant has not sufficiently explained how their son's developmental issues would lead to his qualifying spouse's extreme hardship in his absence.

The Applicant also points to the qualifying spouse's symptomatic cholelithiasis, or "hard, crystal-like deposits that can form in the gallbladder." Although an unfortunate medical condition that likely brought the qualifying spouse substantial discomfort, it is not clear how this medical condition would be made worse in the event of the Applicant's separation, or if there is any care required for this medical condition. Further, the submitted medical documentation indicates that this problem was likely resolved in March 2018, nearly two years prior to the date the application was filed, when the

qualifying spouse's gallbladder was removed. The provided medical documentation reflects that the qualifying spouse responded well to surgery to remove her gallbladder, and that she was discharged from the hospital the same day as the procedure. The Applicant does not discuss how this medical condition is ongoing, what treatment the qualifying spouse receives, if any, for this condition, and how this condition would be impacted by the Applicant's separation to Mexico.

In addition, the Applicant asserts on appeal that the qualifying spouse and their son are "completely reliant" on him. However, the Applicant does not sufficiently articulate or document the nature of this reliance. We acknowledge that family members and spouses are emotionally, financially, and otherwise reliant on each other. However, as noted, some degree of hardship to qualifying relatives is present in most cases involving separation; however, to be considered "extreme," the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. at 630-31. Here, the Applicant does not discuss in detail how his separation from his qualifying spouse and son would differ substantially from the hardship typically faced by spouses and children when separated, nor has he sufficiently articulated how his spouse and child are completely reliant on him. For instance, there is little discussion or evidence to substantiate the Applicant, or his qualifying spouse's, financial situation, or how this would be impacted by his separation.

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 considered the record, including the hardship factors, in its entirety, 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. Therefore, in considering the hardship claims individually and cumulatively, the Applicant has not overcome the deficiencies in the record 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.