U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21655311

Date: JULY 25, 2022

Appeal of Boston, Massachusetts 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 (LPR) 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 Boston, Massachusetts Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish, as required, that denial of admission would result in extreme hardship to the Applicant's spouse, the only qualifying relative. The Director further concluded that the Applicant did not warrant a favorable exercise of discretion. The Applicant filed an appeal of the decision with this office. On appeal, the Applicant contends that the Director erred by not considering the evidence of hardship in its entirety. We review the questions raised 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 who, by fraud or willfully misrepresenting a material fact, seeks to procure admission into the United States 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 U.S. citizen or LPR 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.

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).

II. ANALYSIS

The issue on appeal is whether the Applicant has demonstrated that his spouse would experience extreme hardship. The Applicant does not contest the finding of inadmissibility, a finding supported by the record.[1] We have considered all the evidence in the record and conclude that it does not establish that the claimed hardships rise to the level of extreme hardship when considered both individually and cumulatively.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case his 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 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. 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 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/policymanual (discussing, as guidance, extreme hardship upon separation and relocation). In the present case, the Applicant's spouse indicates that she intends to remain in the United States if the waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship upon separation only.

The record reflects that the Applicant and his spouse married in 2013 and have two children, born in 2014 and 2018. The Applicant asserts that if he is denied admission, his spouse would experience financial and emotional hardship from raising their children without his support, meeting the family's living expenses, including childcare costs, and supporting him in Uganda. The Applicant's spouse herself maintains that the Applicant takes care of their children on a fulltime basis and also works odd jobs to support their family. She contends that if the Applicant is denied admission, she would have no choice but to seek public assistance for their family because she could not continue her employment and afford childcare. She further contends that having to raise their children without the Applicant would break their bond with their father and would devastate her.

We find that the submitted documentation is insufficient to establish the claim of extreme hardship upon separation. With respect to financial hardship, the record contains 2019 tax documentation which indicates that the Applicant's spouse is the primary wage earner with an annual income of approximately $79,000, and the Applicant has an annual income of approximately $15,600. The record also reflects that the Applicant and his spouse purchased a home in 2018. We acknowledge that the Applicant's and his spouses' finances will be negatively affected if the waiver is denied; however, the Applicant's spouse's salary constitutes more than 80% of their household income, and evidence in the record does not demonstrate that she would be unable to afford her family's primary

[1] The record reflects that in 2011, the Applicant misrepresented his marital status when applying for a nonimmigrant visa.

expenses, including childcare.[2] See Matter of Pilch, supra at 631 (BIA 1996) (providing that the inability to maintain one's present standard of living does not ordinarily amount to extreme hardship). Further, the record does not demonstrate that the Applicant would be unable to find employment in Uganda sufficient to support himself. We also note that the record does not support the Applicant's spouse's contention that she would require public assistance to support their family – the current federal poverty guideline for a household of four is currently $26,500 and the Applicant's spouse's income exceeds the guideline by $52,500.[3] Regarding emotional hardship, we acknowledge the Applicant's spouse's statements regarding her reliance upon the Applicant for emotional support as well as the difficulties that separation from the Applicant may cause her; however, the record does not contain any further detail about the impact of any emotional hardship the Applicant's spouse may experience in her daily life. Moreover, the record does not indicate that the Applicant's spouse's situation is unique or atypical compared to others separated from a spouse.

Based on the documentation in the record, we cannot conclude that, when considered in the aggregate, any financial and emotional hardships the Applicant's spouse would experience upon separation from the Applicant would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship. As such, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion. The waiver application will remain denied.

ORDER: The appeal is dismissed.

[2] As the Director noted, the 2019 tax documentation indicates that in 2018, the couple spent $7,200 for childcare services at a local YMCA. In addition, the record contains school documentation indicating that in 2020, their older child attended kindergarten at a private school and received afterschool care at the same institution.

[3] The Department of Health and Human Services issues poverty guidelines each year to determine financial eligibility for certain federal programs.