U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21900401

Date: JUL. 28, 2022

Motion on Administrative Appeals 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 fraud or misrepresentation. The Director of the New York, New York Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds, concluding that the Applicant had not established that his lawful permanent resident spouse would suffer extreme hardship upon his removal from the United States. We dismissed the Applicant's subsequent appeal and motions to reopen and reconsider, which we incorporate here by reference. The matter is before us again on motion to reopen. On motion, the Petitioner submits additional evidence and asserts the record demonstrates extreme hardship to his spouse. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

Any foreign national 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 U.S. citizen or LPR spouse or parent of the foreign national. If the foreign national demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its 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 an applicant's burden to establish eligibility for the requested benefit. *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Except where a different standard is specified by law, an applicant must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

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, how applicants can establish extreme hardship upon separation or relocation).

II. ANALYSIS

We dismissed the most recent motion to reopen and reconsider because the Form I-290B, Notice of Appeal or Motion, did not satisfy the applicable filing requirements because the Applicant's son, who is not an affected party in this proceeding, signed and was named as the individual filing the motion. On the instant motion, the Applicant submits a properly filed Form I-290B, his spouse's updated affidavit and psychological evaluation, and documentation reflecting their son is in the U.S. military. The previously submitted evidence includes statements from the Applicant and his family members, medical and financial records, and information on China.

On motion, the Applicant's spouse reaffirms her decision to relocate to China if the Applicant is refused admission. Therefore, we will only address whether the Applicant has established extreme hardship to his spouse upon relocation. His spouse states that she went to a psychologist for an evaluation of sudden changes in her mental state, she feels very depressed and fearful, she cannot eat and sleep as she used to do, and she had suicidal thoughts in the past when she experienced hopelessness. She refers to the newly submitted psychological evaluation which concludes that the Applicant's spouse suffers from severe depression and anxiety, it is recommended that she receives psychotherapy, if therapy is insufficient she should consider psychiatric medication, and the Applicant should be with her in the United States to provide support. The spouse further indicates there is a possibility she will suffer extreme hardship in China due to her deteriorating mental condition, the doctor who conducted the evaluation told her that mental illness is stigmatized in China and care for the mentally ill is often poor and inappropriate, and he does not believe her mental illness can be treated in China.

The Applicant's spouse asserts that she and the Applicant will be considered dissidents because their son is in the U.S. military, outcasts in society, and deprived of gainful employment and government support. She refers to the 2021 U.S. State Department Report on the Bilateral Relations between the

United States and China and contends the tense, deteriorating political and economic relations between the countries would put their lives in great danger if they relocated to China. The spouse indicates that they, like many Chinese, looked to the United States as a promised land; she left China and obtained asylum in the United States; and the Applicant also applied for asylum to stay here but his request was denied. She states that she and the Applicant pay taxes every year; they have worked hard to raise and support their adult children; and they constitute a solid, law-abiding American family. The spouse also notes that she is totally dependent on the Applicant's job as a restaurant worker.

We acknowledge that the Applicant's spouse would experience difficulty upon relocation to China. However, the record does not establish that she would experience extreme hardship there. While the new evidence on motion shows that she has been diagnosed with depression and anxiety, the psychological evaluation does not reflect that the Applicant's spouse is currently receiving psychotherapy treatment or psychiatric medication. Further, the record lacks evidence to establish that she would be unable to obtain mental health care services in China. We note that the World Health Organization indicates "China has made significant efforts to overcome the barriers that prevent people accessing diagnosis and care, including the introduction of mental health law which calls for more facilities, an increase in mental health professionals and more awareness."[1]

Similarly, the record lacks evidence to support the spouse's assertion that she and the Applicant will be outcasts in Chinese society, deprived of gainful employment and government support, considered dissidents because their son is in the U.S. military, or their lives will be in great danger if they relocated to China. For example, the U.S. State Department Report cited by the Applicant's spouse does not demonstrate that she and the Applicant would be personally endangered in China as a result of current relations between the United States and China. We also note that government records indicate the Applicant's spouse traveled to China subsequent to adjusting her status to lawful permanent resident. Furthermore, as discussed in our previous decisions, the Applicant and his spouse have not established that they would be unable to find employment or appropriate medical care in China or would otherwise experience financial or medical hardship upon relocation. In addition, while the Applicant's spouse would experience hardship due to separation from her adult children, the record includes minimal detail on the nature of this hardship or establish that they would be unable to visit the Applicant and his spouse in China.

Considering all the evidence in its totality, the record is insufficient to show that the hardships faced by the Applicant's spouse upon relocation to China would rise beyond the common results of removal or inadmissibility. We find that the Applicant has not established by a preponderance of the evidence that his spouse would experience extreme hardship if his waiver application is denied. The new evidence submitted on motion is not sufficient to establish that the Applicant is eligible for a waiver under section 212(i) of the Act. Therefore, his waiver application remains denied.

ORDER: The motion to reopen is dismissed.

[1] *See* World Health Organization, *Mental Health in China*, https://www.who.int/china/health-topics/mental-health.