U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21945246

Date: JUL. 28, 2022

Appeal of St. Louis, Missouri Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Haiti, 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 St. Louis, Missouri Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant did not establish that her only qualifying relative, her U.S. citizen spouse, would experience extreme hardship because of her continued inadmissibility. The matter is now before us on appeal. On appeal, the Applicant submits evidence and a brief asserting her eligibility. The Administrative Appeals Office reviews the questions 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 remand the matter to the Director for the entry of a new decision.

I. LAW

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 lawful permanent resident spouse or parent of the foreign national. If the foreign national demonstrates the existence of the required hardship, then they must also show that U.S. Citizenship and Immigration Services should favorably exercise its discretion and grant the waiver. 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).

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation and she does not contest that finding on appeal.[1] The issue on appeal is whether the Applicant has established extreme hardship to her spouse. We find that the record establishes that the Applicant's spouse would experience extreme hardship due to her continued inadmissibility. Our decision is based on a review of the record, which includes, but is not limited to, statements from the Applicant and her spouse, photographs, financial records, her spouse's health records, and information on conditions in Haiti.

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 the applicant's evidence demonstrates 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 Applicant states that her spouse would not remain in the United States separated from her. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship upon relocation.

The Applicant asserts that her spouse, who was born and raised in the United States, would experience emotional, psychological, and financial hardship if he relocated to Haiti with her in addition to hardship based on general country conditions. In regard to emotional and psychological hardship, the Applicant's spouse states that he has an anxiety disorder which can affect his work and daily life. The Applicant's spouse's health records include a diagnosis of anxiety and several individual progress notes. The Applicant states that mental health care in Haiti is inadequate to help him, especially in light of the language barrier her spouse would experience. Documentation submitted reflects that French and Creole are the official languages in Haiti. The Applicant has included information on the state of mental health care in Haiti which reflects minimal options for psychiatrists and psychologists, limited government funding for mental health services, and the high cost of returning to the United States for treatment. Furthermore, the Applicant claims that her spouse would experience hardship due to separation from his family in the United States, including his brother and two sisters, and from his current medical providers. In regard to financial hardship, the Applicant references information from the World Bank, which provides that Haiti is the poorest country in the Western Hemisphere, the average annual income is about $350, and the poverty level is high. She further mentions that her spouse is an electrician and in addition to the low wages and language barrier, his ability to find work would be limited by the state of Haiti's electrical system. The U.S. Agency for International Development details the broken electricity system in Haiti.

[1] The Applicant misrepresented material information in relation to a July 2015 Form I-485, Application to Register Permanent Residence or Adjust Status.

The Applicant also expresses concerns about starting a family in light of the poverty and infant mortality rates in Haiti. Country conditions submitted reflect an infant mortality rate ten times greater than in the United States. Finally, the Applicant expresses concerns for her spouse's safety, as criminals would target him as they perceive Americans as wealthy.

The record reflects that the Applicant's spouse was born and raised in the United States, he has family ties here, he does not speak Creole or French, and he has no ties to Haiti other than the Applicant. Furthermore, the Applicant's spouse would lose his current job as an electrician, have difficulty finding employment in Haiti due to language issues and limited availability of electrician work, and would be subjected to significantly lower pay rates in general. The record also reflects that the Applicant's spouse was diagnosed with an anxiety disorder and mental health care is limited in Haiti, and there are general concerns related to safety and raising a family there. Based on the totality of the record, we find that the Applicant's spouse would experience extreme hardship upon relocation to Haiti with the Applicant.

As the Director did not make a discretionary finding, we will remand the matter for determination of whether the Applicant also merits a waiver in the exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.