U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19231528

Date: MAR. 8, 2022

Appeal of Harlingen, Texas 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 and seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Harlingen, Texas Field Office, denied the application, concluding that the Applicant did not establish extreme hardship to her spouse, the only qualifying relative in this case, if she is denied admission. On appeal, the Applicant argues that she established the requisite extreme hardship.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To be eligible for a waiver of inadmissibility for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act, an applicant must demonstrate that denial of the waiver would result in extreme hardship to his or her U.S. citizen or lawful permanent resident spouse or parent. Section 212(i)(1) of the Act. A determination of whether denial of the waiver would 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). 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).

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 scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. In the present case, the Applicant's spouse would remain in the United States if the waiver application is denied. The Applicant must, therefore, establish that if she is denied admission, her spouse would experience extreme hardship upon separation.

In addition, if an applicant demonstrates the existence of the required hardship, then he or she must also establish that USCIS should favorably exercise its discretion and grant the waiver application. *See* section 212(i)(1) of the Act.

II. ANALYSIS

The Applicant does not contest her inadmissibility, as described in the Director's decision, which we incorporate here. Therefore, the sole issue on appeal is whether the Applicant has established that her spouse would suffer extreme hardship upon separation.

The Applicant's spouse states that he relies on the Applicant for financial and emotional support and explains that she has been an important part of his recovery from a back injury he suffered in a car accident. Although we are sympathetic to the couple's circumstances, for the reasons discussed below, we conclude that the record is insufficient to show that if the Applicant' spouse remains in the United States without her, his hardship would rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

The record includes a psychological evaluation which indicates that the Applicant's spouse suffers from "stress-related reactions related to the uncertainty of the petitioning process and his academic schedule" and concludes that "[d]epression is the likely consequence [of] separation from his wife," and that he "will likely experience social-emotional hardships." The report also indicates that his two children from previous relationships will be impacted because "he will be less emotionally available because of stress, physical discomfort, and academic demands." Although their hardship may be considered to the extent it causes hardship to the Applicant's spouse, the only qualifying relative in this case, the record lacks the specificity and detail necessary for us to determine the hardship the children would face and its impact on their father.[1] Regardless, the report does not establish that his situation, or the symptoms he is experiencing and may experience in the future, are unique or atypical compared to others in similar circumstances. The Applicant also provided medical records related to her spouse's back injury, but they do not demonstrate what physical limitations, if any, he is still suffering and the level of assistance he requires as a result. Regarding financial hardship, while we acknowledge the spouse's statements that he relied on the Applicant's support while in law school, during an unpaid externship, and while studying for the bar exam, as discussed by the Director and conceded by both the Applicant and her spouse, she is no longer authorized to work. The record does not sufficiently establish that the Applicant's spouse has physical or mental health issues that affect his ability to work, or carry out other activities, or that he requires the Applicant's assistance as a result. In addition, there is no indication that other family members are unable or unwilling to assist him, as needed, especially since the

[1] For example, it is unclear whether they live with the couple, the level of interaction they have with the children, and whether the children have any specific needs which would require additional attention.

couple is "staying temporarily with [his] family" and "most of his [six] siblings live on the same acre of land" as his parents.

Even considering all of the evidence in its totality, the Applicant has not established that her spouse's claimed financial, mental, and physical hardships would exceed that which is usual or expected if he remains in the United States while the Applicant returns to live abroad due to her inadmissibility. Because the Applicant has not demonstrated extreme hardship to a qualifying relative if she is denied admission, we need not consider whether she merits a waiver in the exercise of discretion. Therefore, the waiver application will remain denied.

ORDER: The appeal is dismissed.