U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20434229

Date: MAY 13, 2022

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico, has applied to adjust status to that of a lawful permanent resident (LPR) and seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i), for fraud or misrepresentation.

The Director of the Los Angeles, California Field Office denied the waiver, concluding that the record did not establish the Applicant's qualifying relative (his LPR spouse) would experience extreme hardship if the waiver is not granted. On appeal, the Applicant submits additional evidence and a brief asserting that his spouse would experience extreme hardship if his waiver were denied. 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 dismiss the appeal.

I. LAW

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. This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or LPR spouse or parent. 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 Applicant does not contest the grounds for inadmissibility under section 212(a)(6)(C)(i) of the Act, as described in the Director's decision, which we incorporate here.[1] The issue on appeal is whether the Applicant has demonstrated that his LPR spouse would experience extreme hardship upon denial of the waiver.[2]

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case his LPR spouse. Section 212(i) 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(s) 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 a statement from the Applicant's spouse indicating that she would relocate with the Applicant to Mexico if his waiver application were denied.[3] The Applicant must therefore establish that if he is denied admission, his qualifying relative would experience extreme hardship upon relocation.

The record reflects that the Applicant and his spouse have been married since 2002.[4] They both indicate that they rent a house together and have three U.S. citizen children.[5] In support of his waiver request, the Applicant initially submitted hardship statements from himself and his spouse, a "Statement of Information" form from the California Secretary of State showing registration of their company [redacted], the couple's employment records from their restaurant, health insurance cards for their family, an "Affidavit of Rent" for their house from the Applicant's brother, and billing statements. In addition, the Applicant provided letters of support from family and friends, academic records for his children, U.S. income tax returns (2014-2017), family photographs, country information for Mexico, and court records relating to his [redacted] 1991 conviction for sale/transportation of marijuana.

In denying the waiver application, the Director acknowledged the Applicant's submission of the hardship statements, family relationship documents, proof of restaurant ownership, employment information, affidavit of rent, utility and insurance bills, account statements, insurance cards, letters of support, school records, tax returns, photographs, court records, and information on Mexico. The

[1] The Director indicated that the Applicant submitted false information on a U.S. Department of State visa application in [redacted] 1999.

[2] The record indicates that the Applicant's father is also an LPR, but the Applicant does not offer arguments or evidence indicating that refusal of admission would result in extreme hardship to his LPR father.

[3] She sates: "[I]f my husband were forced to return to Mexico, I would probably have to go live with him because where my husband goes so must I."

[4] She received her LPR status in March 2015.

[5] The record includes a copy of each child's California birth certificate identifying the Applicant and his spouse as the parents. Their three children include a son born in 1992, a son born in 1997, and a daughter born in 1999.

Director indicated that the Applicant and his spouse's income from the restaurant was sufficient to cover their household expenses. The Director further explained: "As owners, you have determined how much salary to pay yourselves. The fact that you draw a higher salary than your wife is something of which you and your wife have control over . . . . Your children are also of working age and, given their academic achievements, have good prospects to be significant contributors to the household." In addition, the Director stated that since the Applicant's spouse "is not required to leave the United States, she would be able to retain her income" from the restaurant. The Director also pointed to the possibility of the Applicant's spouse having her adult children run the restaurant or hiring a replacement to handle the Applicant's managerial responsibilities. Furthermore, the Director determined the Applicant had not shown that he and his spouse would suffer economically in Mexico (due to their financial resources and the lower cost of living compared to [redacted]), that their medical needs could not be adequately managed in Mexico, and that he would be unable to find a suitable area in Mexico safe for their relocation.

With the appeal, the Applicant submits an updated hardship statement from his spouse, her medical records, financial records, additional letters of support, academic records for his children, income tax returns for 2018 and 2019, family photographs, and country information for Mexico. In her hardship declaration, the Applicant's spouse states that if her husband were removed from the United States, her "life would be irreparably harmed, and [she] would suffer extreme hardship. Aside from depending on my husband financially, he also takes care of me when I'm not feeling well due to my various medical conditions." In addition to anemia, she asserts that she has suffered from anxiety, insomnia, and depression due to the Applicant's immigration situation. The Applicant's spouse further indicates that while she and her spouse own and work at their restaurant, he is mainly responsible for running the business. She contends that their separation or relocation would case her to suffer emotionally, medically, and financially.

With respect to medical hardship, the Applicant's spouse's healthcare records include laboratory results relating to her bloodwork and medical reports from her physician. The medical reports indicate that she visited her physician at various times complaining of anemia, sore throat, cough, fever, body discomfort, earache, and cold symptoms, but this documentation does not establish the severity and frequency of her anemia, depression, insomnia, and anxiety, or how these conditions affect her ability to perform daily tasks, including employment and household responsibilities. Nor does the record indicate that the Applicant's adult children or brother would be unable to provide physical or emotional support to his spouse in his absence, or that she would be unable to receive treatment for these conditions if she relocated with him to Mexico.

Concerning financial hardship, the record indicates that the Applicant and his spouse share ownership of a restaurant. While the Applicant's spouse asserts that their restaurant would go out of business in his absence, the record does not indicate that their adult children could not step in to assist with the business or that they would be unable hire a restaurant manager to assume the Applicant's responsibilities. The Applicant and his spouse also maintain that without him she would fall short of meeting the family's household expenses, but the evidence does not show that she would be unable to support herself in the event of their separation or relocation. Nor has the Applicant demonstrated that their three adult children or the Applicant's father and brother would be unable to render financial assistance to his spouse, if necessary. For these reasons, the Applicant has not established that

separation from his spouse or their relocation to Mexico would cause her to suffer economic detriment that rises to the level of extreme hardship.

Furthermore, the country condition documentation does not indicate that someone in the Applicant's spouse's situation would face financial, medical, or other difficulties or specific threats to their physical safety and security. The record does not show the specific locality where they would be likely to live in Mexico upon relocation, so the Applicant has not demonstrated what kinds of access he and his spouse would have to employment opportunities or medical care.[6] Similarly, the Applicant has not shown the risk to their personal safety. Regarding their ties and assimilation to Mexico, the Applicant stated that he lived in Mexico until 1989 and returned to live there again from 1993 until 2004. In addition, the Applicant's spouse asserted that she lived in Mexico until age 18 and that she has "4 sisters, 1 brother, and other extended family" that still reside there. She further noted that the Applicant has "his two sisters and uncles in Mexico."

Although we are sympathetic to the Applicant's spouse's circumstances, we conclude that if she remains in the United States without the Applicant or relocates with him to Mexico, the record is insufficient to show that her hardship would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The Applicant has not demonstrated that their separation or relocation would result in emotional, medical, or financial concerns for his spouse that rise to the level of extreme hardship. Even considering all of the evidence in its totality, the record remains insufficient to show that the Applicant's spouse's claimed financial, emotional, and medical hardships go beyond the common results of separation or relocation and rise to the level of extreme hardship.

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 separation or relocation, we cannot conclude he has met this requirement.

ORDER: The appeal is dismissed.

[6] The Applicant has not demonstrated, for example, that he and his spouse, with experience as restauranteurs, would be unable to find employment in Mexico.