U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25005954

Date: NOV. 7, 2022

Appeal of New York, New York Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Barbados, 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 application, concluding the record did not establish the Applicant's only qualifying relative, her U.S. citizen spouse, would experience extreme hardship because of her continued inadmissibility.

On appeal, the Applicant submits a brief and additional evidence, reasserting her eligibility. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review 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 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 discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national. 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).

II. ANALYSIS

The Applicant, a native and citizen of Barbados, was found inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, for filing a fraudulent Form I-360, Petition for Amerasian, Widow or Special Immigrant, seeking classification as a Special Immigrant Religious Worker. The Applicant does not contest inadmissibility on appeal. The issues on appeal therefore are whether the Applicant has established extreme hardship to a qualifying relative and whether she merits a favorable exercise of discretion. The Applicant must demonstrate that denial of the waiver application would result in extreme hardship to a qualifying relative or relatives, in this case her 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 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, establishing hardship upon separation or relocation). In the present case, the record is unclear as to whether the Applicant's spouse intends to remain in the United States or relocate to Barbados if the Applicant's waiver application is denied. The Applicant must therefore establish that if she is denied admission, her U.S. citizen spouse, the only qualifying relative in this case, would experience extreme hardship both upon separation and relocation.

The Director concluded that the hardships claimed by the Applicant's spouse did not rise to the level of extreme hardship. Specifically, the Director determined that the Applicant's spouse's emotional hardship claim was not supported by evidence of follow-up visits or psychotherapy treatment as recommended by a licensed mental health counselor. The Director also determined that the Applicant's spouse did not submit evidence that he was unable to pay the household expenses or provide financial support to his son and grandson in Barbados prior to his marriage to the Applicant. Furthermore, the Director found that the Applicant's and her spouse's decision to wait to have a child until after she obtained lawful permanent residence was a personal choice, not an extreme hardship. Finally, the Director noted that the Applicant did not demonstrate how her medical conditions, namely her migraines and a herniated disc, would result in extreme hardship to her spouse.

On appeal, the Applicant has not established that her spouse's hardships that would result from their separation, considered individually and cumulatively, would rise to the level of extreme hardship. In a statement submitted before the Director, the Applicant's spouse stated that the Applicant "brought joy to [his] life and made [him] feel whole and good about [him]self again" after a painful divorce. Additionally, he further states that the Applicant is at the core of his family life, and that he relies on her calming presence to manage work-related anxiety from his job as a mail carrier. He reiterated that he would like to have a child with the Applicant, but is unable to move forward due to the Applicant's uncertain immigration status. Lastly, the Applicant's spouse maintained that he and the Applicant have medical and mental health issues, which would worsen if the waiver application is not approved.

While we acknowledge the contentions in the record that the Applicant's spouse will experience emotional hardship were he to remain in the United States while the Applicant relocates abroad, the record does not contain documentation to establish the severity of hardship or the effects on his daily life. The Director determined that the Applicant had not established her spouse would experience extreme emotional hardship because she did not submit any record of her spouse's follow-up visits or psychotherapy treatment after his initial evaluation with a licensed mental health counselor in 2014. On appeal, the Applicant submits a confidential clinical update from 2016 for her spouse in which he states that his depression worsened after the denial of her waiver application. The Applicant's spouse also asserted that it would be a disaster if he and the Applicant had to leave the United States as half of their lives have been spent here and neither would be able to find employment in Barbados. During the evaluation, the Applicant's spouse continued to express worry and concern about the Applicant's immigration status and the fate of their relationship if the Applicant was unable to remain in the United States. The same licensed mental health counselor confirmed the Applicant's spouse diagnoses—Major Depressive Disorder, Generalized Anxiety Disorder and Obsessive-Compulsive Disorder and reiterated that his symptoms were directly related to his fear of separation from the Applicant and would worsen without a satisfactory resolution of her immigration case. Although the clinical update confirms the Applicant's spouse's ongoing symptoms of depression and anxiety, it does not specifically explain how the Applicant's absence would hinder his ability to function in daily life, or how the conditions currently affect or impair his daily functioning. Additionally, while the Applicant's spouse states that he and the Applicant are getting older and are waiting to have a child until the immigration case is resolved, there is no further evidence of any resulting hardship if the Applicant and her spouse had to postpone starting a family.[1]

Additionally, the Applicant's spouse assertion that he would experience financial hardship without the Applicant's financial contribution is also not supported by the record. The record indicates the Applicant's spouse works full-time as a U.S. Postal Service mail carrier, which provides health and retirement benefits. On appeal, the Applicant submits a monthly household budget indicating that he earned $2,860 per month while listing monthly mortgage and utility payments totaling approximately $1292; statements from checking and savings accounts with [redacted] Bank containing $2500 and $10,015, respectively and checking and savings accounts at [redacted] Bank containing $2,154 and $60,094, respectively; as well as evidence of $9500 in gambling earnings that year. The Applicant has also not submitted any documentation to establish that she is unable to obtain gainful employment to support herself in Barbados and assist her spouse if needed.[2] Furthermore, while the Applicant's spouse states that he would be unable to provide financial support to his son and grandson in Barbados, he provided no evidence that he was unable to meet those financial obligations prior to his marriage to or without a financial contribution from the Applicant. We note that the Applicant's spouse's son indicated in his own statement that his father has sent him $250 "for every month of [his] life" to help him with his daily living. Finally, the record indicates the Applicant's spouse has a support system in the United States, including his mother and several uncles; the Applicant's spouse has not established that these family members would be unable to provide some support as needed.

[1] The Applicant submitted a letter from her doctor stating that she underwent a dilation and curettage procedure to remove uterine fibroids in 2015.

[2] The record contains a certificate indicating the Applicant received training in commercial cooking and catering from the Culinary Academy of New York in 2008.

In sum, although the Applicant's spouse states that the Applicant has been a stabilizing force in his life, the record does not establish that separation from the Applicant will affect his ability to function in his daily life. Regarding financial hardship, while we acknowledge the Applicant's spouse may experience some financial difficulty without the Applicant, the record does not demonstrate that he will face a financial strain that would go beyond the hardship typically resulting from separation from a spouse. Nor does the record establish that the Applicant's spouse's family members in the United States would be unable to assist him as needed during the Applicant's absence.

The Applicant must establish that denial of the waiver application would result in extreme hardship to her U.S. citizen spouse, her qualifying relative, upon both separation and relocation. As the Applicant has not established extreme hardship to her spouse in the event of separation, we cannot conclude she has met this requirement. As such, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. Section 291 of the Act, 8 U.S.C. § 1361. As the Applicant has not met the extreme hardship requirement of section 212(i) of the Act, she has not met that burden.

ORDER: The appeal is dismissed