U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23094561

Date: NOV. 30, 2022

Appeal of Houston, Texas Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of El Salvador, has applied to adjust status to that of a lawful permanent resident (LPR) and 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 Houston, Texas Field Office denied the waiver application, concluding that the factors present in the record did not elevate the Applicant's claim to the realm of extreme hardship.

On appeal, the Applicant submits a brief and contends that he is not inadmissible under section 212(i) of the Act because he did not deliberately conceal his misdemeanor offense from U.S. Citizenship and Immigration Services (USCIS). The Applicant also contends that he demonstrated extreme hardship to his U.S. citizen spouse.

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). In these proceedings, it is the applicant's burden to establish eligibility for the requested benefit by a preponderance of 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

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), renders inadmissible 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, admission into the United States, or other benefit provided under the Act. Section 212(i) of the Act provides for 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 noncitizen.

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 issues on appeal are whether the Applicant is inadmissible for fraud or willful misrepresentation of a material fact and whether he has demonstrated that his U.S. citizen spouse would suffer extreme hardship upon denial of the waiver.

A. Inadmissibility

In 1992, the Applicant was arrested in [redacted] for criminal possession of stolen property in the fifth degree, which was later dismissed. In 1994, the Applicant was convicted of theft in Texas, sentenced to one year of confinement, and ordered to pay a fine of $700. In 1995, the Applicant was convicted of evading arrest in Texas, sentenced to 30 days in jail, and ordered to pay $380 for fees and costs.

After the Applicant's two misdemeanor convictions, the Applicant applied for Temporary Protected Status (TPS) and filed applications for employment authorization based on TPS but did not disclose that he had two misdemeanor convictions. Pursuant to section 244(c)(2)(B)(i) of the Act, 8 U.S.C. § 1254a(c)(2)(B)(i), an applicant is ineligible for TPS if he or she has been convicted of any felony or two or more misdemeanors committed in the United States. Based on his material misrepresentations of his eligibility, USCIS approved his applications for employment authorization based on TPS.

The Applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact because he did not disclose his entire criminal record in multiple TPS applications and in two applications for adjustment. On appeal, the Applicant contends that he is not inadmissible because he did not "deliberately conceal his nearly 30-year-old misdemeanor offense" from USCIS, that he disclosed his other criminal offenses, and that the records for his 1994 theft offense were not available because they were too old and did not show up on his background check.

The record reflects that the Applicant continuously concealed his two misdemeanor convictions in Texas from his initial TPS application (filed in 2001) through his first adjustment interview in 2009 (filed in 2002) until his TPS application (filed in 2012) was denied in 2012. The initial TPS application (filed in 2001) was finally denied in 2017 after discovery of the second misdemeanor conviction in Texas. By signing his applications under penalty of perjury, the Applicant attested that his responses and information provided in his applications were true and correct. The Applicant's signature on these applications "establishes a strong presumption" that he knew and assented to the contents. *Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018). A misrepresentation is material under section 212(a)(6)(C)(i) of the Act when it tends to shut off a line of inquiry that is relevant to the foreign national's admissibility and that would predictably have disclosed other facts relevant to his or her eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-*, 27 I&N Dec. 105 (BIA 2017). By failing to disclose his two misdemeanor convictions in his TPS applications, the Applicant attempted to obtain TPS. As noted above, the Applicant was ineligible for TPS because

he has been convicted of two misdemeanors committed in the United States. A plain reading of the statute indicates that section 212(a)(6)(C) of the Act does not require a person to procure a visa or benefit in order for inadmissibility to apply. Section 212(a)(6)(C) of the Act applies in cases where an applicant attempts to procure a benefit under the Act but is unsuccessful. In addition, from 2001 through 2003, the Applicant received TPS-based employment authorization to which he was not entitled. Therefore, we conclude that the Applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact and requires a waiver of this inadmissibility.

B. Extreme Hardship

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case, the Applicant's 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. *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 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 no statement from the Applicant's spouse indicating an intent to remain in the United States or relocate to El Salvador if the Applicant's waiver application is denied. Therefore, the Applicant must establish that if he is denied admission into the United States, his qualifying relative would suffer extreme hardship both upon separation and relocation.

Regarding financial hardship, the Applicant stated that his spouse relies on the Applicant to provide for their family financially, including paying for a mortgage, utilities, food, and other living expenses and helping their adult children. The Applicant also stated that his father-in-law who lives in El Salvador is ill and unable to work and relies on remittances sent by his spouse from the Applicant's earnings. The Applicant stated that it would be difficult for him to support his family in El Salvador on the salaries he would earn there because the gross national income per capital in El Salvador from 2010 to 2019 was about $4,000. The Applicant further stated that should he be forced to remain in El Salvador for the next decade, he would be dependent on his spouse for financial support and that his spouse would face added expenses of traveling to El Salvador to visit with him. The Director reviewed the Applicant's two paystubs and federal income tax return for 2020, which were submitted as evidence of the Applicant's employment and income, and various bills and a list of financial obligations and determined that none of the documentation demonstrated obligations that reach beyond those normally accrued by most people. The Director also noted that there are other familial sources that may provide some level of support, if needed.

On appeal, the Applicant asserts that his spouse would suffer extreme hardship in his absence if she were to remain in the United States because she would not be able to financially support herself without the Applicant's current income. The Applicant also asserts that he and his spouse would have

a difficulty finding employment in El Salvador that could support them. The record contains the Applicant and his spouse's federal income tax return for 2020. In this income tax return, the Applicant's spouse listed her occupation as a manager. While the Applicant claims that his spouse would not be able to financially support herself without his income, it appears that the Applicant's spouse previously worked as a manager and earned income. In addition, it has not been established that the Applicant would be unable to contribute to the family's income from a location outside the United States or that the Applicant's spouse would be unable to adjust to new circumstances. Furthermore, it has not been established that the Applicant and his spouse would be unable to find employment or make a living in El Salvador where both of them were born and raised. The evidence submitted is insufficient to show that financial hardship would rise to the level of extreme hardship if the Applicant's spouse accompanied the Applicant abroad or remained in the United States while the Applicant resided abroad.

Regarding medical hardship, the Applicant stated that his spouse suffers from carpal tunnel syndrome, sinus inflammation, eye inflammation, and high cholesterol and that in 2020, his spouse was diagnosed with COVID-19. The Applicant stated that his spouse is unable to work due to her carpal tunnel syndrome and side effects of having COVID-19. The Applicant stated that his spouse fears of leaving her home and being exposed to COVID-19 or her family being exposed. The Applicant also stated that his spouse fears that she would not be able to get treatment for her medical issues in El Salvador and that she would face dire medical consequences as a result. The Director found that there was no corroborating doctor's statement or letter with a diagnosis or description of her current conditions and limitations.

On appeal, the Applicant asserts that his spouse continues to struggle with daily tasks due to her residual symptoms from COVID-19, such as breathlessness, and has been largely inactive and that in El Salvador, she would not have the same access to medical care and treatment that she has here. However, the record does not establish that the medical assistance the Applicant's spouse needs is not available in El Salvador. In addition, while the Applicant claims that his spouse is unable to work due to her carpal tunnel syndrome and side effects of having COVID-19, the record does not contain sufficient evidence to support this claim. The Applicant previously submitted a post operative discharge instruction from a surgery center, which indicates that the Applicant's spouse was discharged from the surgery center in January 2021 after unspecified surgery and that she was restricted from her activities for 24 hours. The Applicant also previously submitted a discharge instruction from a hospital, which indicates that the Applicant's spouse was treated for pneumonia due to COVID for 5 days in July 2020. The discharge instruction also shows that the Applicant's spouse was prescribed medications and was instructed to self-isolate for 10 days and resume regular diet. While the evidence indicates that the Applicant's spouse received medical treatments, it does not speak to her need for assistance in daily activities or indicate the severity of her medical issues. The evidence submitted is insufficient to indicate that the spouse's medical needs would rise to the level of extreme if the Applicant's spouse accompanied the Applicant abroad or remained in the United States while the Applicant resided abroad.

Regarding other personal hardships, the Applicant's spouse stated that she is terrified of living in El Salvador because she and the Applicant would live in poverty and danger. The Applicant stated that most of his close family members are in the United States and thus could not offer assistance or shelter should he and his family relocate to El Salvador with him. The Applicant also stated that his spouse's

U.S. citizen mother and sisters live in the [redacted] area and are very close, talking daily and visiting each other weekly. The Director noted that although the Applicant's spouse fears for her safety if she returns to El Salvador, her father currently resides there.

On appeal, the Applicant asserts that his spouse would suffer extreme hardship should she relocate to El Salvador if his waiver were denied because El Salvador is an extremely dangerous place for females and because in the wake of the pandemic, violence against women has increased. The Applicant also states that his spouse would not have the physical and emotional support of her adult children in El Salvador. The Applicant further states that his son suffers from severe depression and substance abuse and has been in and out of the mental health hospital, which is difficult for his spouse. The Applicant further states that his spouse fears that the Applicant's relocation to El Salvador would only exacerbate their son's struggle.

We acknowledge that in the event of relocation, the Applicant's spouse may experience some hardships due to her close family ties in the United States and dangerous country conditions in El Salvador, as stated by the Applicant. The Applicant states that he has "a very little" family living in El Salvador. However, the Applicant has family members in El Salvador and his father-in-law resides in El Salvador; therefore, it appears that the Applicant and his spouse would have some family support in the event of relocation and resettlement. It is also noted that leaving behind the security of living in the United States would be considered a common consequence of relocation. Regarding the Applicant's son, for a waiver of the inadmissibility, a qualifying relative is the U.S. citizen or LPR spouse or parent. The Applicant's son is not a qualifying relative. However, we consider any hardship that the qualifying relative may experience as a result of hardships to other nonqualifying relatives. Here, although the Applicant's son may require medical treatment, counseling, or therapy due to his depression and substance abuse, the evidence does not indicate that the Applicant's son relies on the Applicant for his medical and emotional needs or that the Applicant's absence would impose an extreme hardship on the Applicant's spouse. Collectively, the evidence submitted does not provide that the Applicant's spouse would suffer extreme hardship in either scenario of separation or her relocation to El Salvador.

As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to his spouse both upon separation and relocation. While we are sympathetic to the family's circumstances, considering all the evidence in its totality, the record remains insufficient to establish that the aggregated financial, medical, emotional, and other personal hardships of separation and relocation would be unusual or atypical to the extent that they rise to the level of extreme hardship.

As the Applicant has not established extreme hardship to his spouse in the event of separation and relocation, we cannot conclude that he has met this requirement. Because the Applicant has not demonstrated extreme hardship to his qualifying relative if he is denied admission to the United States, we need not consider whether he merits a waiver in the exercise of discretion. Therefore, the waiver application will remain denied.

III. CONCLUSION

The Applicant has not established his statutory eligibility for the requested waiver under section 212(i) of the Act. Accordingly, the waiver application will remain denied.

ORDER: The appeal is dismissed.