U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22741954

Date: OCT. 4, 2022

Appeal of Memphis 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 (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 fraudulent acts. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The Charleston Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility. The Director concluded the Applicant did not establish extreme hardship to their U.S. citizen spouse, nor did she demonstrate that discretion should be exercised in her favor. The Applicant then filed a motion to reopen and a motion to reconsider that the Memphis Field Office Director dismissed.

On appeal, the Applicant submits a brief and additional evidence, asserting their 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 conclude that a remand is warranted in this case.

I. LAW

A 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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility ground 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. Section 212(i) of the Act. If the foreign national demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

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).

Once the foreign national demonstrates the requisite extreme hardship, they must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N 296, 299 (BIA 1996). We must balance the adverse factors evidencing an applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country while in compliance with our immigration laws (particularly where residency began at a young age), evidence of hardship to the foreign national and their family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

II. ANALYSIS

The Applicant admits she is inadmissible under section 212(a)(6)(C)(i) of the Act because she misrepresented material facts on a Form I-821, Application for Temporary Protected Status, and travelled with advance parole that she would not have been able to apply for but for the misrepresentations made on the Form I-821 applications and renewals. The Charleston Field Office Director denied her waiver application. The Applicant filed a motion to reopen and reconsider and unexpectedly received a dismissal of that filing from the Memphis Field Office Director. The Memphis Field Office Director determined the Applicant failed to satisfy the filing requirements for a motion to reopen because she did not "provide any new evidence to change the result of the underlying case." As it relates to her motion to reconsider, the Memphis Field Office Director stated that she "failed to submit reasons for reconsideration that is supported by pertinent precedent decisions on incorrect application of law or USCIS policy."

On appeal, the Applicant raises multiple errors in the decision on the motions. Foremost was the Memphis Field Office Director that issued the decision on her motions did not have the authority to do so because they lacked jurisdiction. The Applicant cites to 8 C.F.R. § 103.5(a)(1)(ii) that states: "Jurisdiction. The official having jurisdiction is the official who made the latest decision in the proceeding unless the affected party moves to a new jurisdiction. In that instance, the new official having jurisdiction is the official over such a proceeding in the new geographical locations." The Applicant states she never moved from the jurisdiction of the Charleston Field Office, and the proper

course of action was for that office to adjudicate her motions. We acknowledge the Applicant's statement questioning why the Memphis Field Office adjudicated the motions and not the Charleston Field Office when she did not relocate her residence. While the record does not appear to indicate the reason for the transfer, USCIS may relocate work to other field offices to process applications more quickly.

Next, the Applicant states that she provided an abundance of new facts and new evidence in support of her motion to reopen despite the Memphis Field Office Director's statement to the contrary. A review of the material submitted with the motion bears out the Applicant's claims, and as a result, we will remand the matter to the Memphis Field Office Director to consider those new facts and evidence that accompanied the motion, as well as the material and claims in the record the Applicant offered with the appeal.

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