U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22744208

Date: OCT. 4, 2022

Appeal of New York 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 committing 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. The New York Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive her inadmissibility. The Director concluded the Applicant did not establish extreme hardship to their LPR spouse, her only qualifying relative, nor did she show that discretion should be exercised in her favor.

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).

II. ANALYSIS

A. Background

In 1993 the Applicant utilized a photo substituted passport and visa in an attempt to enter the United States. The former Immigration and Naturalization Service placed the Applicant in exclusion proceedings and found her inadmissible under sections 212(a)(6)(C)(i) of the Act for the fraud, 212(a)(7)(A)(i) of the Act as an immigrant who is not in possession of a valid unexpired immigrant visa, and 212(a)(7)(B)(i)(II) of the Act as a nonimmigrant who is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission. The immigration court ordered the Applicant excluded when she failed to appear to her hearing before an Immigration Judge. While unlawfully in the United States, the Applicant gave birth to three U.S. citizen children: in 1993, 1995, and 1999. She remained in the United States until 2003, when she returned to Pakistan. The Applicant married her LPR spouse (Z-M-) while in Pakistan.[1]

As a side note, we observe that the U.S. Department of State's (DOS) Reciprocity Schedule requires the following for proof of marriage in Pakistan: "For U.S. immigration purposes, Pakistani Muslim applicants must present both an original, signed Nikah Nama (with its English translation) and a NADRA-issued marriage registration certificate. Note that while both documents reflect similar information, each on its own does not constitute sufficient proof of marriage." *Reciprocity Schedule*, U.S. Department of State – Bureau of Consular Affairs (Sept. 29, 2022), https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Pakistan.html. However, the marriage certificate the Applicant filed for the record was issued under "Muslim Law Ordinance 1961 of Pakistan," and does not appear to comport with the types of materials mandated by the Reciprocity Schedule. The Director may wish to consider whether the U.S. government will recognize the marriage for immigration purposes based on this apparent shortcoming.

In 2009, the Applicant applied for a nonimmigrant visitor's visa with DOS, but she failed to disclose her previous exclusion proceedings or the fraud leading to those proceedings. The Applicant entered the United States in 2009 as a nonimmigrant visitor and now applies for LPR status as the parent of a U.S. citizen. To address the Applicant's fraudulent act, she filed the waiver application and the

[1] We use initials to protect the identity of involved parties.

Director denied that filing together with the Form I-485, Application to Register Permanent Residence or Adjust Status.

The waiver application is now before us on appeal. The Applicant claims that if her qualifying relative remains in the United States, he would not be able to maintain their small business and also run the household, as the Applicant carries much of the weight for both entities. As part of the Applicant's household responsibilities is caring for Z-M- who struggles with depression, anxiety, sleep apnea, and narcolepsy, in addition to their adult son who is diagnosed with bipolar disorder. On appeal, the Applicant submits a new psychological evaluation for Z-M-, a new letter from their son's Family Psychiatric Mental Health Nurse Practitioner, an updated affidavit from Z-M-, as well as other evidence.

B. Extreme Hardship

As it relates to Z-M-, he met the Applicant and although they did not have a ceremony, they considered themselves to be husband and wife in a religious manner. In 1997, Z-M- was married to another spouse for approximately a decade then obtained a divorce. He then returned to Pakistan in 2007 and married the Applicant. Within the denial decision, the Director states: "[A]ccording to the report, as the family was created through effective polygamy it can be argued that an unco[n]ventional living situation is not beyond your spouse's adap[]tive behavior." Here, the Director appears to consider factors within their decision-making process that may not be appropriate. The Director did not sufficiently explain why they placed significant weight on the manner in which their relationship was formed to allay the level of hardship the qualifying relative might endure.[2]

Accompanying the appeal, the Applicant offers a new psychological evaluation describing additional details about Z-M-'s mental health that was not included in a previous assessment. The new evaluation discusses his history of depression and how it could be more prevalent if the Applicant is removed from the United States and they are separated. Because the record does not indicate that the Director reviewed these additional claims and supporting evidence before forwarding the appeal to our office, we will return the matter to the Director to consider them as it relates to extreme hardship for each qualifying relative.

On remand, the Director should make a determination of not only the fraud the Applicant committed in 1993 and 2009 relating to her nonimmigrant visas and entries into the United States, but also whether she is inadmissible under sections 212(a)(7)(A)(i) or 212(a)(7)(B)(i)(II) as indicated on the Form I-110 and Form I-122 documents (i.e., Notice to Applicant for Admission, Detained for Hearing before Immigration Judge, which are charging documents for those in exclusion proceedings) issued when the Applicant was placed in exclusion proceedings. The Applicant may also be subject to those

[2] Although we do not agree with the manner in which the Director raised the issue of Z-M-'s possible polygamous situation as it relates to extreme hardship, the Director may elect to inquire further into this issue to establish the exact timeline and facts surrounding the two marital relationships while Z-M- was residing in the United States. Although he obtained his LPR status in 2000 and rescission of that status is no longer possible, if the Director determines he was a practicing polygamist in the United States, and he obtained his LPR status as a result of such a relationship, the Director must decide what actions to take such as noting the situation in any governmental systems to enable agencies to make properly informed decisions about Z-M-'s future immigration benefits (e.g., admission to the United States, naturalization, etc.). *See Matter of Lovo-Lara*, 23 I&N Dec. 746, 751 n.3 (BIA 2005) (discussing the inadmissibility ground for polygamy).

grounds relating to her 2009 entry if the Director determines she actually intended to immigrate and remain in the country, or if the Director determines she was a nonimmigrant who was not in possession of a *valid* nonimmigrant visa or border crossing identification card at the time of her application for admission. If the Director determines she was inadmissible under section 212(a)(7)(A)(i), the Director should consider whether a waiver of that inadmissibility ground is available to her under section 212(k) of the Act; 8 C.F.R. § 212.10. Or, if they decide she is inadmissible under section 212(a)(7)(B)(i)(II), whether the waiver of that ground under section 212(d)(4) is available to her.

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