U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22737518

Date: OCT. 6, 2022

Appeal of Newark 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 fraud or misrepresentation of a material fact. 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 Newark 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, her only qualifying relative, or 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 will dismiss the appeal.

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. Immigration History

In the Applicant's home country, she was in a common-law marriage in which she had one child. She indicated under the previous law, the government acknowledged common-law marriage as *de facto* or actual marriage, but that law changed in 1994. She further states that she and her common-law spouse have been separated since 1999, and this previous "marriage essentially came to an end around that time." Although the Director's decision does not state the immigration forms in which the Applicant misrepresented herself as married, it appears this infraction derives from a nonimmigrant visitor's visa application she filed with the U.S. Department of State in 2003. The Applicant utilized that visa to enter the United States. The Applicant filed a waiver application and the Director denied that filing. The Director noted insufficient claims that her spouse would experience extreme hardship were she to be removed from the United States or if he accompanied her to her birth country. The Director also noted a lack of evidence to corroborate the claims of hardship the Applicant presented. This waiver application is now before us on appeal.

On appeal, the Applicant contends the Director failed to consider all the relevant factors in the aggregate, and they erred by not determining the positive factors in the case outweighed the negative ones in the exercise of discretion. The Applicant submits additional evidence on appeal in the form of an affidavit from an individual expressing an in-depth knowledge of the healthcare situation in the Applicant's home country and the issues her spouse would face if he were to relocate to that country with her. Because the Applicant does not contest that she is inadmissible under section 212(a)(6)(C)(i), it is unnecessary that we address whether she is inadmissible.

B. Extreme Hardship

To establish her statutory eligibility for a waiver of inadmissibility for fraud or willful misrepresentation, the Applicant must demonstrate the denial of her application would result in extreme hardship to 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. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual.

As it relates to the claimed error that the Director did not consider all the relevant factors in the aggregate, we note that the Director not only cited the case law on that issue, but after discussing the Applicant's claims, they also informed her that she failed to demonstrate the hardships rose to the standard required in a waiver application. Consequently, we do not agree with the Applicant that the Director committed an error on this issue.

Next, the Applicant's appeal brief recounts her spouse's physical ailments (chronic hypertension and hypercholesterolemia) and places a heavy reliance on the aspect of "separation from family living in the United States [that can] be the most important single hardship factor in considering hardship in the aggregate." The Applicant argues that, as it relates to her spouse's emotional pain, it is unreasonable for USCIS to require evidence to support his claims of emotional pain in the event he is separated from the Applicant.

Here, we do not agree that the Applicant or her spouse may claim any personal turmoil her spouse would experience in her absence without probative evidence to not only corroborate those claims, but also to put them into context and to reveal the significance of the impact those experiences would have on her spouse's emotional health. An applicant's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *see also* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion).

We therefore find no error on the Director's part when they noted the Applicant did not satisfy her burden of proof as it relates to her spouse's emotional pain claims. The Applicant further takes issue with the Director requiring her to explain why she is best suited to provide the assistance and the support her spouse requires. Again, we consider this to be an important part for the Applicant to satisfy her burden to explain the reasoning behind her claims.

Turning to the Applicant's claims relating to her spouse's physical health, she identified a new form of evidence offered with the appeal from an individual who has studied the public health situation in the Applicant's home country. This individual noted that the Applicant's spouse would be required to pay an annual fee for access to a set of medical services available to foreign nationals in the Applicant's home country. In the appeal, the Applicant claims the requirement that her spouse would only have access to medical services for foreigners, and he would be required to pay for those services, "would undoubtedly pose great threat to his health or even life due to the aggravating hypertension with the increase of age." Left unexplained, was how his access to those services and the requirement to pay for them posed such a threat. As a result, we conclude the Applicant has not met her burden as it relates to her spouse's access to medical care in her home country.

The Director also posited that the Applicant and her spouse could relocate to the country where he was born instead of her home country. On appeal, the Applicant explains that when her spouse became a U.S. citizen, he relinquished any form of citizenship from his birth country. She further explains that the Director was incorrect that the couple could relocate to his birth country as an alternative option. Even with this alternative option extinguished, the Applicant has not established that her spouse's

medical conditions demonstrate that he would experience extreme hardship were he to relocate with her to another country.

If an applicant demonstrates a qualifying relative would be subject to extreme hardship after a denial of their waiver application preventing them from earning lawful permanent resident status, the next step is to determine whether they warrant a favorable exercise of discretion. Even though the Director discussed whether she warranted discretion in their denial decision, they were not required to perform that analysis. And neither are we as it would serve no purpose to address this portion of the Director's decision. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of M-F-O-*, 28 I&N Dec. 408, 417 n.14 (BIA 2021) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Accordingly, the waiver application remains denied.

ORDER: The appeal is dismissed.