U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22376396

Date: OCT. 7, 2022

Appeal of Fort Myers, Florida 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 and seeks a waiver of inadmissibility under sections 212(h) and (i) of the Immigration and Nationality Act (the Act)), 8 U.S.C. § 1182(h) and (i). U.S. Citizenship and Immigration Services (USCIS) may grant these discretionary waivers if it determines that refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Fort Myers, Florida Field Office denied the waiver application, concluding that the Applicant was eligible for neither waiver because she did not establish extreme hardship to her spouse, her only qualifying relative. In addition, the Director determined that even if she had established extreme hardship, she would not merit a favorable exercise of discretion. On appeal, the Applicant argues that the Director erred.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *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

The Director concluded that the Applicant is inadmissible to the United States on two separate bases: (1) the ground specified at section 212(a)(6)(C)(i) of the Act; and (2) the ground specified at section 212(a)(2)(D) of the Act.

A. Inadmissibility Based on Misrepresentation

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. A waiver of this inadmissibility ground is available if refusal of admission would result in extreme hardship to the foreign national's United States citizen or lawful permanent resident spouse or parent. If the

foreign national demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

B. Inadmissibility Based on Criminal Activity (Prostitution and Commercialized Vice)

As noted, the Director also concluded that the Beneficiary is inadmissible pursuant to section 212(a)(2)(D) of the Act, which states the following:

> *Prostitution and commercialized vice.*—Any alien who—
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> (i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,
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> (ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or
>
> (iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution, is inadmissible.

Id.

A waiver of this inadmissibility ground is available if the foreign national is the spouse, son, or daughter of a U.S. citizen or lawful permanent resident. To qualify for the waiver, the foreign national must demonstrate that refusal of admission would result in extreme hardship to the foreign national's United States citizen or lawful permanent resident spouse or parent. If the foreign national demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

C. Extreme Hardship

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).

An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant, or 2) if the qualifying relative relocates overseas with the applicant. Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence clearly demonstrates that the parties intend to either separate or relocate together. If their intent is clear, extreme hardship must be demonstrated under the scenario they intend to follow in order to qualify for the waiver. An 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 without the applicant, if the applicant is denied admission. *See USCIS Policy Manual*, Part B, Chapter 4(b), https://www.uscis.gov/policy-manual/volume-9-part-b-chapter-4. In the present case, the Applicant's spouse has indicated he will not accompany her to China. He wrote "[i]f [the Applicant] is forced to return to China, I will not be able to go with her." Thus, we will analyze the record to determine if the Applicant has established that if she is denied admission, her spouse would suffer extreme hardship upon separation from her.

II. ANALYSIS

We analyze the Applicant's inadmissibility under sections 212(a)(6)(C)(i) and 212(a)(2)(D) of the Act separately below.

A. Misrepresentation

On appeal, the Applicant argues that her misrepresentation was not willful because she was simply following the advice of her visa application preparer. The misrepresentation at issue involves the Applicant applying for a nonimmigrant tourist visa in 2011 and presenting herself as a married person, when in fact she was divorced. Her assertion that she was married provided strong evidence of close ties to China, which led to the granting of her tourist visa. Upon entering the United States, the Applicant applied for asylum. Her asylum application was referred to the Immigration Court. Upon marrying her spouse, and obtaining an approved Form I-130, Petition for Alien Relative, the Immigration Court terminated her proceedings so that she could pursue adjustment of status before USCIS.

The record makes clear that the Applicant willfully misrepresented her marital status on her tourist visa application as well as during her interview with the Consular Officer (CO). In her statement on appeal, she acknowledges that she knew it was a misrepresentation: "I know my willingness to follow the agent's instructions to say I was married when I was actually divorced was wrong." Furthermore, at the time of her misrepresentation, she was an adult, and she sought out the services of a visa preparer because she wanted to leave China. We see little evidence to support a finding that her misrepresentation was not willful. As such, the Applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act, and we will evaluate her eligibility for the section 212(i) waiver.

On appeal, the Applicant argues her husband (her only qualifying relative) will suffer extreme medical hardship if she is separated from him. She provides evidence to establish he has been diagnosed with chronic lymphocytic leukemia (CLL), major depressive disorder (MDD), and generalized anxiety disorder (GAD). However, in his personal statement, although he mentions his CLL diagnosis, he does not mention his MDD or GAD or detail any challenges he is experiencing due to MDD or GAD. With regard to CLL, he provides a general list of symptoms associated with CLL but does not specify

whether he himself has experienced any of them. The Applicant's spouse is in his early seventies, and while he indicates that his CLL will lead to more symptoms as he ages, his statement does not reveal any limitations on his life due to CLL or exactly how his health will be impacted if he remains in the United States without the Applicant. For instance, his statement recounts finding a new job in the months prior, and he states that his job is physically demanding. His statement indicates that he is in good health and that his CLL, MDD and GAD are controlled and not adversely affecting his life. While we have no desire to minimize these diagnoses in any way, a generalized listing of the types of symptoms others with similar diagnoses face, or a similar listing of symptoms he could potentially face at some undefined point in the future, is not sufficient to satisfy the preponderance standard. Without more detail, the record as it currently stands with regard to the health conditions of the Applicant's spouse is not sufficient to establish that he would experience extreme hardship.[1]

The Applicant also argues that her spouse will suffer severe financial hardship because he relies on the Applicant's income to pay household expenses, and because they have established a business together. In his statement, the Applicant's spouse explains that he will have to sell their business (a massage spa) because the Applicant carries out the day-to-day management, and his role is limited to minor maintenance and repairs. While we acknowledge that the Applicant's removal to China may result in a loss of income to her spouse, the couple's certified public accountant (CPA) provides a general picture of their finances and explains that the couple has a net worth of approximate $342,000. Furthermore, the CPA explains that the Applicant's spouse is a day trader, using $34,518 in assets to trade. While we acknowledge that the loss of the couple's business income would certainly be financially impactful, the evidence is insufficient to find that the loss would rise to the level of "extreme" as the term is defined for our purposes here. Furthermore, while we take the Applicant's spouse's statement at face value and acknowledge that he believes he will have to sell the business if the Applicant is forced to return to China, the record does not contain evidence indicating whether the couple has not explored other options, such as employing a third party to manage their business, which could potentially mitigate the impact of the loss of business income. Furthermore, there is evidence that establishes the Applicant's spouse opened an art gallery in 2013. The record is silent as to the amount of income generated from his art gallery, or if the couple has maintained this business, which appears to constitute an additional income stream. In sum, the totality of the evidence demonstrates that the Applicant's spouse has multiple actual and potential financial streams of income that could blunt the impact of the potential closure of one or more of their businesses.

On appeal, the Applicant argues that her spouse will experience extreme emotional hardship if they live separately. We acknowledge that the Applicant and her spouse have both previously experienced unsuccessful marriages, and attest to their love for one another. As the Director explained however, emotional hardship due to separation is not sufficient to rise to the level of extreme hardship because it is a common consequence of family separation. *See e.g. Matter of Ngai*, 19 I&N Dec. 245 (BIA 1984) (discussing the common consequences of a bar in the family context). Moreover, the psychological evaluation submitted with the Form I-601 shows that his symptoms of MDD and GAD

[1] In other words, absent information or evidence connecting her husband's diagnoses to any hardship he faces, will face, or even is likely to face because of those diagnoses, the record has not been developed to the point that we can even *conduct* a meaningful analysis as to whether or not he would face extreme hardship. If we cannot even *conduct* that analysis, then we cannot conclude the preponderance standard has been met.

are attributed to his concerns about his wife's uncertain immigration status.[2] Furthermore, the severity of his anxiety and depression is not established in the record: for example, we observe that he does not mention them in his personal statement. Moreover, no evidence has been provided to establish he continued therapy or takes medication for his MDD or GAD. And as noted above, the evidence regarding the impact of his CLL diagnosis is insufficient. We acknowledge the psychological evaluation describes the Applicant's spouse as socially isolated, however, there is countervailing evidence that demonstrates he has strong familial relationships to his brother, daughter, and ex-wife. For instance, photographs submitted with the application and on appeal demonstrate that he spends time with people other than the Applicant. As stated earlier, there is evidence suggesting that prior to meeting the Applicant (the couple claims to have met online in 2014), he opened an art gallery to market his original works. His own statement on appeal explains that he is close to his brother, daughter, and his ex-wife. Moreover, the fact that he uses the internet to make connections (as he did with the Applicant) undermines the claim that he is socially isolated. Viewing the evidence in its totality, we find the evidence insufficient to establish that he will suffer extreme emotional hardship if the Applicant returns to China.

On appeal, the Applicant argues that we should consider her own hardship in our analysis. However, we find no basis for such an analysis in section 212(i) of the Act and the Applicant identifies none.

B. Criminal Activity

The Director determined the Applicant is also inadmissible under section 212(a)(2)(D) of the Act as a result of two arrests and convictions. On appeal, the Applicant argues that she is not inadmissible for these crimes because she was not "engaging in prostitution" and cites to *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549 (BIA 2008), *Matter of T-*, 6 I&N Dec 474 (BIA 1955), and several unpublished AAO decisions in support of her assertion. Because our previous analysis is dispositive of her appeal, we hereby defer adjudication of these arguments and reserve the issue of whether the Applicant is inadmissible under section 212(a)(2)(D) of the Act. Because the Applicant has not established her eligibility for a section 212(i) waiver for misrepresentation, she would remain inadmissible under section 212(a)(6)(C)(i) even if we found these arguments persuasive. *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 L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

C. Favorable Exercise of Discretion

Even if the Applicant had established extreme hardship to her husband, we would not grant the waiver because we agree with the Director that the Applicant does not merit a favorable exercise of discretion. A discretionary analysis requires us to weigh the positive factors versus the negative factors of granting a discretionary benefit such as the waivers available at sections 212(i) or 212(h) of the Act. The Director determined that the Applicant did not merit a favorable exercise of discretion because her

[2] The evaluation states "[t]he fear of long-term separation from his wife is taking a particularly grave toll on [redacted] life. He has gone from being easy-going and energetic to being extremely depressed and anxious. He can no longer sleep well, and every night he is plagued with worry as he tries to fall or stay asleep."

"criminal history and pattern of fraud/misrepresentation and immigration violations are considerable negative factors" that have not been outweighed by the favorable factors in her case. While acknowledging the positive factors present in the Applicant's case, on balance, we agree that they remain outweighed by the negative factors outlined in the Director's decision.

III. CONCLUSION

The Applicant must establish that denial of the waiver application would result in extreme hardship to her qualifying relative upon separation. As she has not established extreme hardship to her spouse in the event of separation, we cannot conclude she has met this requirement.

ORDER: The appeal is dismissed.