U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22723681

Date: OCT. 11, 2022

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of China, 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 Los Angeles, California Field Office denied the waiver application, concluding that the record is insufficient to establish extreme hardship to her qualifying relative and that the Applicant does not warrant a waiver in the exercise of discretion.

On appeal, the Applicant submits a brief and contends that her qualifying relative would experience extreme hardship if her waiver application were denied. 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 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, 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 foreign national.

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 Applicant was found inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act for making misrepresentations to the U.S. Department of State regarding her marital status, spouse, and the purpose of her trip to the United States. The Applicant does not contest this determination on appeal, and it is supported by the record. Thus, the remaining issues on appeal are whether the Applicant has demonstrated that her U.S. citizen spouse will suffer extreme hardship if the inadmissibility is not waived, and if so, whether she merits a waiver as a matter of discretion.

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 this case, the record indicates that the Applicant's spouse intends to remain in the United States. The Applicant must, therefore, establish that if she is denied admission, her qualifying relative would experience extreme hardship upon separation.

On appeal, the Applicant contends that "ordinary hardships must be considered in the aggregate in determining whether extreme hardship exists." Upon review of the record in its totality, we conclude that the record does not establish that the claimed emotional, medical, and financial hardships, considered individually and in the aggregate, rise to the level of extreme hardship.

Regarding financial hardship, the Applicant asserts that she helps take care of her spouse's parents, serves as the primary caretaker of their two-year-old daughter, helps with the family construction business, and takes care of the family home. The Director acknowledged that balancing home, work, and the care of a child and elderly parents is a struggle for many families, but the Director determined that this did not constitute extreme hardship. On appeal, the Applicant did not address these issues other than to state that her spouse's siblings cannot help because they have their own families to take care of and her in-laws are old and do not work. The Applicant did not submit additional evidence to support this claim. The Applicant asserts that if she is not around, then her spouse would have to hire someone to assist him with the construction business and a caregiver for their daughter and that she would also need help from her spouse while she looks for a place to live and work in China. However, the Applicant did not submit sufficient evidence to support her claim, such as hours of administrative work she performs for the construction business, the cost to hire an administrative assistant, the cost of daycare or caregiver in her area, or how such additional costs would affect their monthly budget.

Regarding medical hardship, the Director acknowledged the Applicant's spouse's osteoarthritis of the knee and that the Applicant drives her spouse when he is unable to drive, massages his legs, and applies ice to his knee. However, the Director noted that the evaluation from [redacted] indicated that the spouse is able to return to work and has no limitations. On appeal, the Applicant asserts that while the doctor may have cleared her spouse to work, the pain still persists, this condition will not get better with his age, and her spouse will be eventually unable to move around. However, the record does not contain sufficient evidence to support this claim. The record does not corroborate the spouse's need for assistance in daily activities or indicate the severity of his current medical issues. While the letter from [redacted] states that the Applicant's spouse has continuous pain on his lateral right knee and is undergoing physical therapy, as noted above, the letter also states that the spouse is able to return to work and has no work limitations. Neither this letter nor the evidence of record indicates that the Applicant's spouse will be unable to move around or that the spouse would have difficulties performing necessary daily tasks without assistance from the Applicant.

Regarding emotional hardship, the Applicant previously submitted an evaluation from a clinical psychologist. This psychological evaluation states that the Applicant's spouse was diagnosed with adjustment disorder with anxiety and depression. The Director noted that the evaluation was based on a single two-hour interview video conference, and no psychological tests were administered. While the Applicant's spouse's distress regarding the prospect of his separation from the Applicant is not in question, a waiver is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon separation. As noted by the Director, the Applicant's spouse has close family ties in the United States, and before the pandemic, their family would meet together regularly and loved to have the children hang out together. The Applicant also indicated that when she and her daughter were sick with COVID, one of the siblings dropped off food and other necessities. The record does not establish that the spouse's family would not be able to provide emotional support to the spouse in the event of separation. The evidence in the record does not establish that the emotional effects of separation from the Applicant would be more serious than the type of hardship normally suffered when one is faced with the prospect of separation from one's spouse. Further, the record does not contain any treatment plan for the spouse's diagnosis or ongoing sessions with the clinical psychologist or whether the spouse needs daily assistance due to his diagnosis.

As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to her spouse upon separation. 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, psychological, and emotional hardships of separation 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 her spouse in the event of separation, we cannot conclude that she has met this requirement. Because the Applicant has not demonstrated extreme hardship to her qualifying relative if she is denied admission to the United States, we need not consider whether she merits a waiver in the exercise of discretion. Therefore, the waiver application will remain denied.

III. CONCLUSION

The Applicant has not established her 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.