U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21782805

Date: SEP. 19, 2022

Appeal of Las Vegas, Nevada 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 section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The Director of the Las Vegas, Nevada Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's U.S. citizen spouse, the only qualifying relative, would experience extreme hardship if she were denied the waiver. On appeal, the Applicant submits a brief and new evidence and asserts that her spouse would experience extreme hardship due to her inadmissibility.

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). This office reviews the questions in this matter *de novo*. *See 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

Any noncitizen 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 waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. If the noncitizen 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.

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 does not contest the finding of inadmissibility, which is supported by the record. The issues on appeal therefore are whether the Applicant has established extreme hardship to a qualifying relative and whether she merits a favorable exercise of discretion. Upon consideration of the entire record, including the arguments made on appeal, we conclude that the Applicant has not established that her U.S. citizen spouse would experience the requisite extreme hardship.[1]

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case 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. *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 scenarios is not required if an applicant's evidence establishes 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.* The Applicant discussed how her spouse would experience extreme hardship both upon separation and relocation. In the present case, the evidence of record does not indicate whether the Applicant's spouse intends to remain in the United States or relocate with the Applicant to South Korea if the waiver application is denied. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

Documentation submitted with the waiver application includes but is not limited to a statement from the Applicant's U.S. citizen spouse, a psychological evaluation from a licensed psychologist regarding her spouse's diagnosis, and the Applicant's medical records documenting her miscarriage. The Applicant contends that her qualifying relative would experience extreme emotional hardship because of her continued inadmissibility.

Regarding separation, the Applicant's spouse contends that he will experience emotional hardship were he to remain in the United States while the Applicant relocates abroad. In the statement by the Applicant's spouse, he indicated that he suffers from anxiety and insomnia, and was diagnosed with depressive disorder and adjustment disorder "due to the stress and pressures of my wife being denied green card and possible removal" from the United States. He further contends the Applicant suffered

[1] While we may not discuss every document submitted, we have reviewed and considered each one.

a miscarriage due to the uncertainty surrounding her immigration issues. He also indicated that if he relocated abroad with the Applicant, he could be arrested since his parents did not file for a military exemption on his behalf. Finally, he stated that if the Applicant moved back to South Korea, it would cause extreme hardship to the marriage and may lead to a divorce.

The psychological evaluation of the Applicant's spouse indicated a deterioration in his mental health and ability to cope with his emotions and situations over the prior 12 – 24 months. The Applicant's spouse reported the following emotional and/or behavioral changes: increased irritability; negative thinking; withdrawal; mood shifts; becoming easily frustrated; becoming easily overwhelmed; sleep disturbance; nightmares; restlessness; decreased enjoyment in activities; decreased interest in social activities; decreased interest in intimacy or sex; increased fatigue or tiredness; low motivation; and feelings of worthlessness. The evaluation noted the spouse took several assessments that indicated he has mild symptoms of anxiety, moderate depressive symptomology, and a low level of general resilience. The diagnosis as indicated in the evaluation is adjustment disorder and unspecified depressive disorder. The psychologist recommended that if symptoms worsen over the next year, the Applicant's spouse should have a follow up consultation with a mental health provider for further evaluation or treatment.

While we do not minimize the spouse's diagnoses of adjustment disorder and unspecified depressive disorder, the record does not show that the Applicant's spouse's situation, or the symptoms he is experiencing, are unique or atypical compared to others in similar circumstances. For example, the record does not show that he has any physical or mental health issues that affect his ability to work or carry out other activities, or that he requires the Applicant's assistance to conduct his daily affairs. Because the psychologist listed symptoms he suffers and did not address the exact nature and severity of these conditions and describe the specific family assistance he needs, we cannot ascertain the severity of those conditions or determine the degree to which the Applicant's physical presence is required to manage them. Further, the evaluator did not recommend medication or further treatment at this time.

On appeal, the Applicant explains that she and her husband are expecting their first child in 2022. As evidence thereof the Applicant submitted a letter from a nurse confirming the applicant's pregnancy, ultrasound images, and affidavits from the Applicant and her spouse confirming the pregnancy. The Applicant states that extreme hardship is established since she will be separated from her child. However, we must consider the hardship to the Applicant's qualifying relative rather than to the Applicant. In addition, we may consider the hardship to the Applicant's child only as it affects her qualifying relative spouse. *See* 9 *USCIS Policy Manual*, *supra*, at B.4(D)(2).

In addition, the Applicant states that if she needs to relocate it would cause "significant disruption" to them and her spouse would "not be in the position to care for the child without mother." However, the Applicant did not provide any explanation of the significant disruption or why the spouse could not care for the child. We recognize the importance of family unity and the ability of parents and caregivers to provide for the welfare of children. A primary caretaker's inadmissibility can result in a shift of caregiving responsibility to the qualifying U.S. citizen relative; however, after review of the evidence submitted with the waiver application and on appeal, the record does not establish extreme hardship in all scenarios.

On appeal, the Applicant also states that her father-in-law passed away due to pancreatic cancer but did not provide any explanation as to how this will affect her spouse. Outside of providing a death certificate, the Applicant did not provide any additional information.

The evidence in the record is insufficient to establish that the spouse's hardships, considered individually and cumulatively, would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship due to separation from the Applicant. The spouse's statement does not establish that separation from the Applicant would affect his ability to function in his daily life.

Because the evidence of record does not indicate whether the Applicant's spouse would remain in the United States or relocate with her to South Korea if the waiver application is denied, the Applicant was required to establish that denial of the waiver application would result in extreme hardship to a qualifying relative upon both separation and relocation. As she did not establish extreme hardship to her qualifying relative in the event of separation, we cannot conclude she has met this requirement. As such, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. Section 291 of the Act, 8 U.S.C. § 1361. Here, she has not met that burden.

ORDER: The appeal is dismissed.