U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22082084

Date: SEPT. 19, 2022

Appeal of Los Angeles 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 an act of fraud. 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 or qualifying relatives. The Los Angeles 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.

On appeal, the Applicant submits a brief 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).

II. ANALYSIS

On May 9, 2004, the Applicant utilized her sister's nonimmigrant visitor's visa to enter the United States. This constituted fraud on her part meaning she is inadmissible to the United States under section 212(a)(6)(C)(i), and she requires a waiver application approval. The Applicant filed such a waiver before the Director, which they denied concluding she did not establish her spouse—her only qualifying relative—would suffer extreme hardship if she were refused admission to the United States. The Director noted two principal hardships within their decision: (1) the detrimental effect on her spouse's emotional and psychological health; and (2) the financial difficulties her spouse would experience if she were removed from the United States. The waiver application is now before us on appeal.

Within the appeal, the Applicant claims the Director erred because they did not consider other factors such as her spouse's family and community ties in the United States, his lack of family in the Applicant's home country, other relevant financial matters, and country conditions in the Applicant's home country. The Applicant also claims the Director erred by only considering the hardship claims individually rather than in the aggregate.

First, although the Applicant's spouse made comments about relocating to her home country in the statement he provided before the Director, he clearly states "I would not be able to relocate with my wife if she were to return to Colombia." He expresses that he would have no legal status, he would not be able to find work, and it would not be in his best interest to move to her home country. Additionally, the cover letter from the Applicant's counsel before the Director states: "If this waiver is not approved, [her spouse] will remain in the United States." This appears to explain why the Director did not address the country conditions the Applicant's spouse would encounter were he to relocate with her. However, USCIS policy provides that officers should still consider country conditions as it relates to U.S. Department of State (DOS) Travel Advisories. USCIS policy states:

> If the officer finds that the qualifying relative would remain in the United States while the applicant returns to a country or region that is subject to a DOS warning against travel, the officer should evaluate whether the separation may result in extreme hardship to the qualifying relative. In such cases, the officer should consider the hardship to the qualifying relative resulting from the increased danger to the applicant in the relevant country or region.

9 *USCIS Policy Manual* B.4, https://www.uscis.gov/policymanual. The record contains a 2018 human rights report from DOS and a Travel Advisory is present on DOS' website for Colombia. *Colombia Travel Advisory*, Travel.State.Gov (Sept. 19, 2022), https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/colombia-travel-advisory.html.

Relating to the Applicant relocating to a country with a DOS Travel Advisory, the appeal brief merely reflects that certain types of crime are prevalent in Colombia, the Applicant would experience an increased level of danger, and the Director was supposed to factor this information into their decision. Lacking from the appeal brief and from the material submitted before the Director is a substantial argument accompanied by probative evidence explaining how this will impact her spouse or how it increases the hardships he would experience. As a result, while the Director should have discussed the DOS Travel Advisory in their decision, it is not apparent that were the Director to include such analysis, it had the potential to change the outcome of the case. It is not enough to demonstrate errors in an agency's decision; an applicant must also establish that they were prejudiced by the mistake. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009); *Molina-Martinez v. United States*, 578 U.S. 189, 203 (2016). As the Applicant has not demonstrated she was prejudiced by the Director's error, such a lapse in propriety is harmless and is insufficient grounds upon which to base this appeal.

Continuing with the emotional impact on the Applicant's spouse, the Director briefly discussed the emotional difficulties he would experience in her absence. In the appeal brief and in her spouse's statement offered on appeal, they note her presence in his life provided structure and a greater sense of responsibility. The brief surmises that if the Applicant's spouse is separated from her, his mental health would deteriorate in a way similar to what he experienced after his separation from a previous spouse. We note that the Applicant did not offer any documentation from a mental health professional before the Director or on appeal that might provide insight into her spouse's mental health state, as well as how her absence might affect his condition.

As it relates to financial hardships, the Director observed that it appeared her spouse would maintain the ability to cover his monthly expenses, and the record lacked sufficient evidence to corroborate her claims regarding some of her spouse's financial obligations and the strain that her absence might have on that scenario. Within the appeal brief, the Applicant claims the Director "did not include miscellaneous basic needs such as groceries, transportation expenses, clothing, entertainment expenses, phone bill, etc." Even if her spouse's earnings would not cover the obligations that both she and the Director noted, the Applicant has not shown that this inadequacy amounts to an extreme hardship. These are the types of difficulties one might expect resulting from the sudden absence of a spouse due to their removal from the United States. And we reiterate that to be considered "extreme," the hardship must exceed that which is usual or expected. *See Pilch*, 21 I&N Dec. at 630–31.

Within the appeal brief, the Applicant notes the Director did not consider her spouse's community ties in the United States and she identifies this as an additional error. However, because neither the Applicant nor her spouse advanced this argument before the Director, we do not consider this to be an error on the Director's part. As the Applicant did not make this claim before the Director, we will not consider it here for the first time on appeal. New assertions advanced for the first time to an administrative appellate body are not properly before us, especially if the filing party was represented by counsel in the lower proceedings. *Matter of M-F-O-*, 28 I&N Dec. 408, 410 n.4 (BIA 2021) (refusing to consider the appellant's humanitarian claims that were presented for the first time on appeal). Even setting the exhaustion issue aside, the appeal brief only mentions that the Applicant's spouse has ties to the community, but it did not specify what those ties consist of. This is an inadequate claim asserted but not developed on appeal that falls short of meeting the Applicant's burden of proof.

Finally, we agree that the Director should have cumulatively considered the hardships the Applicant and her spouse claimed in accordance with *Ige*, 20 I&N Dec. at 882. Still, while we acknowledge that error, on appeal the Applicant has not explained how the totality of the hardship her spouse might experience would change the Director's decision from an adverse outcome to a positive one. Instead, the appeal brief presents a conclusory statement that "[i]n the aggregate, [the factors we discussed above] compel a finding of extreme hardship . . . ." It is insufficient to allege eligibility through conclusory assertions that are not supported by sufficient evidence that proves the allegation, or persuasive arguments that adequately explain the asserted facts. *Matter of Ho,* 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Fano v. O'Neill*, 806 F.2d 1262, 1266 (5th Cir. 1987); *1756, Inc. v. Att'y Gen*, 745 F. Supp. 9, 17 (D.D.C. 1990).

Because the Applicant has not identified how this error on the Director's part impacted the outcome of her case, it appears to be of a harmless nature. Again, the Applicant has not demonstrated that she was prejudiced by the Director's error and that is not enough to prevail in this appeal. *See Sanders*, 556 U.S. at 409; *Molina-Martinez*, 578 U.S. at 203. Furthermore, even considering the totality of this filing, we conclude the emotional, psychological, and financial hardships to the Applicant's spouse upon separation from her—when considered in the aggregate—are those that are expected, and she has not demonstrated these hardships rise to the requisite level of extreme. *See Pilch*, 21 I&N Dec. at 630–31. Although we sympathize with the difficulties it appears the Applicant and her spouse will experience, she has not satisfied the mandatory standard required in this case.

ORDER: The appeal is dismissed.