U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22510297

Date: SEP. 19, 2022

Appeal of San Diego, California 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 the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). The Director of the San Diego, California Field Office, denied the application, concluding that the Applicant did not establish extreme hardship to his qualifying relatives, if the waiver is denied. On appeal, the Applicant asserts that the Director failed to consider the cumulative effect of the hardship factors to all of his qualifying relatives, and submits additional evidence.[1]

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). Upon our de novo review, we will remand the matter to the Director for further proceedings.

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. There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident (LPR) spouse or parent of the noncitizen. If the noncitizen demonstrates the existence of the required hardship, then they must also show that U.S. Citizenship and Immigration Services 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

[1] The Applicant also lists his Form I-485 adjustment application's receipt number in Part 2.3 of Form I-290B, Notice of Appeal or Motion. The adjustment application, however, is a separate proceeding, over which we have no appellate authority. See 8 C.F.R. § 245.2(a)(5)(ii).

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 issue on appeal is whether the Applicant has demonstrated his U.S. citizen spouse, U.S. citizen father, or LPR mother would experience extreme hardship upon denial of the waiver. On appeal, the Applicant does not contest his inadmissibility, as described in the Director's decision, which we incorporate here by reference. However, the Applicant contends that the Director failed to consider the cumulative effect of the hardship factors to all of his qualifying relatives. The Applicant further contends that the Director should have requested additional evidence or issued a notice of intent to deny prior to denying the application.[2]

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 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. 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/policymanual. In the present case, the record is unclear whether the Applicant's spouse and parents would remain in the United States or relocate with the Applicant if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse or parents would experience extreme hardship both upon separation and relocation.

The record contains, among others, statements from his qualifying relatives, financial documents of the Applicant's household, his parents' UNHCR[3] refugee certificates, character letters, family photographs, and articles regarding country conditions in Iraq.

Upon review, we conclude that the record does not establish that the Director properly considered all relevant evidence related to extreme hardship to the Applicant's spouse and parents. As noted above, section 212(i) waiver requires a showing of extreme hardship to the U.S. citizen or LPR spouse or parent of the applicant. The record indicates that the Applicant's parents adjusted their status as refugees, but the Director did not consider related hardship upon relocation or separation.[4] The Director should also consider hardship to qualifying relatives resulting from hardship to non-qualifying relatives, including their children. We also note that throughout the decision, the Director makes conclusory statements without sufficiently analyzing the hardship factors.

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[2] The Director is not required to issue these before denying an application. See 8 C.F.R. § 103.2(b)(8)(iii) (stating that if the evidence does not establish eligibility, USCIS may deny an application, may request more information, or may issue a notice of intent to deny).

[3] United Nations High Commissioner for Refugees

[4] A qualifying relative's prior grant as an asylee or refugee is a significant factor to consider weighing heavily in support of finding extreme hardship in both relocation and separation. See 9 USCIS Policy Manual B.5(E)(1); available at https://www.uscis.gov/policy-manual/volume-9-part-b-chapter-5.

Accordingly, we will withdraw the Director's decision and remand the matter to the Director to properly consider all relevant evidence including the evidence submitted on appeal, which the Director has not had a chance to review. Upon remand, the Director may request any additional evidence considered pertinent to the new determination and any other issue to determine in the first instance if the Applicant has established extreme hardship to his spouse or either of his parents, and merits a favorable exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.