U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22082076

Date: SEP. 29, 2022

Appeal of Tucson, Arizona Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico, 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). The Director of the Tucson, Arizona Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant had not established the requisite hardship to a qualifying relative. On appeal, the Applicant argues that her spouse would suffer extreme hardship upon both separation and relocation. 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

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 discretionary 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 noncitizen. 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). In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant was found inadmissible for fraud or misrepresentation concerning her Border Crossing Card (BCC), and her long periods of unauthorized residence and employment in the United States. The Applicant does not contest the inadmissibility finding, a determination supported by the record.[1] The issue on appeal is whether the Applicant has demonstrated her LPR spouse would suffer extreme hardship upon denial of the waiver.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case her LPR 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. 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. 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* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (explaining, as guidance, establishing hardship upon separation and relocation). In the present case, the record does not contain a statement from the Applicant's spouse indicating whether he intends to remain in the United States or relocate to Mexico if the Applicant's waiver application is denied. The Applicant must therefore establish that if she is denied admission, her qualifying relative would experience extreme hardship both upon separation and relocation.

On appeal, the Applicant contends that her spouse would suffer financial, emotional, and medical hardship upon separation or relocation. In support of her contention, the Applicant submits, among other things, a statement from her spouse; an updated psychologist evaluation for her spouse; pay stubs; bills; financial statements; and various identity documents.

Regarding financial hardship upon separation, the Applicant claims her spouse cannot afford their expenses on his own. The Applicant's joint tax return from 2020 shows a total income of $36,996. However, this income is imputed to the spouse, who works at least three jobs. We note that the Applicant recently began working in the nutrition department of a hospital. However, the record does not contain evidence of how much income, if any, she contributes to the household. Therefore, the Applicant has not established the full extent of the financial impact of separation from her spouse. In addition, the record does not establish that the Applicant would be unable to find work in Mexico, nor

[1] On July 29, 2021, the Applicant appeared for an interview on her Form I-485, Application to Register Permanent Residence or Adjust Status. Her adjustment of status was based on an approved Form I-130, Petition for Alien Relative filed by her U.S. citizen daughter. The Applicant testified that she began residing in the United States in December 1993 and entered the United States on several occasions using her BCC. The Applicant renewed her BCC on October 28, 1999, at the United States Consulate in [redacted], Mexico, after she was already residing in the United States. The Applicant testified that she last entered the United States on May 13, 2001, through [redacted] Arizona where she presented her BCC. The Director determined that the Applicant violated the terms of her BCC by unlawfully residing and working in the United States. The Director also noted that the Applicant testified that she had not been asked by Customs and Border Protection officers (CBP) about the purpose of her many entries into the United States, and her claim was not credible. The Director determined that each time the Applicant entered, she misrepresented to CBP Officers the reasons for her entry, and when she renewed her BCC, she was aware that it did not authorize her to work in the United States.

does it indicate the Applicant's spouse would be unable to continue working or support himself in the Applicant's absence.

Concerning emotional hardship upon separation, the Applicant's spouse claims he relies on the Applicant for emotional stability and support. In support of these claims, the Applicant submitted into the record two psychological evaluations. The first was produced in November 2021 and the second, an updated psychological evaluation, was produced in March 2022. The updated evaluation states that the Applicant's spouse has had feelings of helplessness and hope when he considers the Applicant's immigration status. He has problems with his mood, sleep, appetite, energy levels, motivation, interests, and concentration. The evaluation further notes that the spouse's PHQ-9 score[2] went from 15 (moderately severe depression) to 20 (severe depression) warranting need for treatment with medication and psychotherapy. We note, the record does not contain evidence that the spouse has been prescribed medication to combat his depression, and the only recent medication noted in the record was Irbesartan (for high blood pressure) and Atorvastatin (for high cholesterol). The updated evaluation indicates the spouse experiences symptoms of major depressive disorder, recurrent severe with anxious-distress, severe panic disorder and generalized anxiety disorder. In the November 2021 evaluation, the counselor suggested that the spouse treat his depression with antidepressants and psychotherapy. The March 2022 evaluation suggests the same course of treatment. However, there is no evidence in the record indicating that the spouse has pursued the suggested course of treatment. Further, the evidence does not support that the Applicant's spouse would be physically or financially unable to care for himself in the Applicant's absence, or that he would be precluded from obtaining medical treatment in the Applicant's absence. Finally, the record does not indicate that the Applicant's adult son and daughter could not provide emotional or other support in the Applicant's absence.

Lastly, upon review of the record, the Director did not apply a heightened standard in assessing the spouse's medical conditions. In this regard, the Director acknowledged that the spouse was diagnosed with hypertension, high cholesterol, and borderline diabetes, but concluded that the spouse did not suffer from any serious or life-threatening illnesses. Thus, after considering the spouse's medical conditions and all the other factors in the aggregate, the Director correctly determined that the Applicant did not establish extreme hardship. Moreover, the Applicant's reliance on *Matter of Marin*, 16 I&N Dec. 581 (BIA 1978) is unavailing. *Matter of Marin* involved the former section 212(c) waivers and is used as guidance in balancing favorable and unfavorable factors in deciding whether discretion is warranted. *Id.* at 584. Because the Applicant did not establish extreme hardship to her spouse, an analysis of whether she merits a positive exercise of discretion need not be conducted.

Although we acknowledge that the Applicant's spouse may face some hardships upon separation, based on the record, we cannot conclude that when considered in the aggregate, the hardship to the Applicant's spouse would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship. The Applicant must establish that denial of the waiver application would result in extreme hardship to a qualifying relative both upon separation and relocation. As the Applicant 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.

[2] The PHQ-9 is used for screening, diagnosing, monitoring, and measuring the severity of depression.