U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24745049

Date: APR. 28, 2023

Appeal of Kendall, Florida Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of Cuba residing in the United States, has applied to adjust status to that of a lawful permanent resident. A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Kendall, Florida Field Office denied the application, concluding that the record did not establish that the Applicant's spouse would experience extreme hardship if the waiver is not granted. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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 return the matter to the Director for further proceedings consistent with this decision.

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 United States citizen or lawful permanent resident 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).

II. ANALYSIS

In [redacted] 2013, the Applicant married F-O-C-[1] in [redacted] Cuba. In November that same year, F-O-C- submitted a Form I-130, Petition for Alien Relative, seeking to classify the Applicant as the spouse of a U.S. citizen. During the immigrant visa application process, the Applicant and F-O-C- were interviewed by a consular officer. The Applicant and F-O-C- gave inconsistent testimony regarding, among other things, their long-standing family relationship[2], sex life, their routines prior to the interview, and other details of daily life that spouses should generally know about one another. After reviewing the findings of the Department of State, USCIS issued a notice of intent to revoke (NOIR) approval of the Form I-130 petition, citing the discrepancies identified by the consular officer and giving F-O-C- and the Applicant the opportunity to respond to the allegations of marriage fraud. The Applicant was thereafter paroled into the United States in December 2016 for a period of two years pursuant to the Cuban Adjustment Act (CAA).[3] No response was received to the NOIR, and USCIS thereafter revoked approval of the petition in February 2017. Based on the foregoing, the Director determined that the Applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for fraud and willful misrepresentation and requires a section 212(i) waiver of such inadmissibility.

On appeal, the Applicant asserts that she entered her marriage with F-O-C- in good faith and that the Director did not consider the evidence rebutting her inadmissibility. However, a review of the record indicates that the Applicant did not dispute her inadmissibility before the Director and did not submit evidence below to rebut the finding of inadmissibility. The Applicant provides a supplemental personal statement, a statement from F-O-C-, and a statement from F-O-C-'s mother, as well as some photographs of various events. However, while each of the statements asserts that the Applicant entered the marriage for the purpose of creating a life together and the photographs depict the Applicant and F-O-C- together on a few unspecified occasions, they do not directly address the inconsistencies in testimony identified by the Director or provide substantive or probative details of the bona fides of their marital relationship. Nevertheless, the new evidence submitted on appeal has not been reviewed or considered by the Director in determining the Applicant's inadmissibility.

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[1] We use initials to protect the identity of individuals.

[2] F-O-C- was a relative of the Applicant's first spouse. During her interview with the consular officer, the Applicant claimed she had never met F-O-C- prior to the death of her first spouse; however, during his interview, F-O-C- stated they had interacted on multiple occasions and the death of the Applicant's first spouse is what brought them closer together.

[3] In June of 2020, the Applicant was issued a Form I-862, Notice to Appear, placing her in removal proceedings before an immigration judge (which remain pending) and charging her as having been admitted to the United States but removable under sections 237(a)(1)(A), (B) of the Act, 8 U.S.C. § 1227 (a)(1)(A), (B), as an overstay and for being inadmissible for fraud and misrepresentation at the time of entry. However, as noted, the record establishes that the Applicant last entered the United States in December 2016 as an arriving alien pursuant to a grant of parole under section 212(d)(5) of the Act and was never admitted to the United States. USCIS therefore retained jurisdiction to adjudicate the Applicant's adjustment of status application under the CAA underlying this waiver application. *See Matter of Martinez-Montalvo, 24 I&N Dec. 788 (BIA 2009)*; 8 C.F.R. §§ 245.2(a)(1) and 1245.2(a)(1)(ii).

Alternatively, the Applicant asserts on appeal that even if she is inadmissible, the record demonstrates the requisite extreme hardship to her qualifying U.S. citizen spouse if the Applicant is refused admission as required to establish her eligibility for a section 212(i) waiver, and she submits additional evidence in support of this assertion.

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. 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. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual. In the present case, the record before the Director did not contain a clarifying statement of intent to either relocate or separate. On appeal, however, the Applicant provides a statement from her U.S. citizen spouse that he intends to relocate to Cuba 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 upon relocation to Cuba, which was not directly addressed by the Director.

With her initial application, the Applicant submitted a personal statement, a statement from her current U.S. citizen spouse, a psychological assessment for her spouse, evidence of financial obligations (including car insurance payments, phone bills, lease agreements, car payments, and tax documents from 2018 and 2019), and country conditions information for Cuba. As additional evidence of extreme hardship upon relocation, she now submits on appeal an updated personal statement, an additional statement from her spouse, evidence of financial obligations similar to those submitted to the Director, the same country conditions information submitted to the Director and an updated psychological evaluation for her spouse.

The Applicant asserts that her spouse would suffer extreme financial, emotional, and medical hardship upon relocation to Cuba. With respect to their financial hardship claim, in their statements to the Director and on appeal, the Applicant and her spouse stated that they would be unable to obtain employment in Cuba if they relocated because they lost their Cuban citizenship and as a consequence, have lost all rights to live and work in Cuba and would be unable to support themselves. Moreover, the psychological assessment submitted to the Director and an updated one on appeal contains a detailed account of the hardship claim upon relocation raised by the Applicant's U.S. citizen spouse. These include the possibility of political persecution based on his brother's political detention when he was young, the fear of future human rights abuses common in Cuba, the extreme poverty he claims he would face he would face there due to the inability to financially support himself and his spouse arising in part because the government controls employment, the loss of family ties in the United States, and the inaccessibility of daily essentials such as food, clean water, and medicine. The psychological evaluation submitted on appeal also goes on to diagnose the Applicant's spouse with several complex mental health issues that require further psychological treatment and contends that such treatment would be unavailable or inaccessible to him in Cuba.

The new evidence on appeal is material as it directly relates to the Applicant's claim that he is not inadmissible as asserted and to his new claim on appeal that his spouse intends to relocate to Cuba and would suffer extreme hardship upon such relocation if his waiver application is denied. As stated, the Director appears to have considered extreme hardship to the spouse solely upon separation as the Applicant's spouse intent was unclear, and did not assess the Applicant's evidence of hardship upon relocation to the spouse submitted below. We will therefore remand the matter to the Director to consider in the first instance the Applicant's new evidence relating to his inadmissibility and the evidence submitted below and on appeal in support of the claimed extreme hardship to the Applicant's U.S. citizen spouse upon relocation.

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