U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27285819

Date: August 31, 2023

Appeal of Hartford, Connecticut Office Decision

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

The Applicant, a citizen of Jamaica, 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), for committing fraud when obtaining a nonimmigrant visa. 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 Director of the Hartford, Connecticut Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the record did not establish that refusal of admission would result in extreme hardship to the Applicant's only qualifying relative, her U.S. citizen spouse. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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. If the noncitizen 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).

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 guidance on the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both these scenarios is not required if the applicant's evidence demonstrates 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. In the present case, the record contains a clear statement from the Applicant's spouse indicating he intends to remain in the United States if the Applicant's waiver application is denied.

If the noncitizen demonstrates the requisite extreme hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. Matter of Mendez-Moralez, 21 I&N 296, 299 (BIA 1996). We must balance the adverse factors evidencing an applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. Id. at 300 (citations omitted).

Finally, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality." Matter of Chawathe, 25 I&N Dec. at 376. That decision explains that, pursuant to the preponderance of the evidence standard, we "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." Id.

II. ANALYSIS

The Applicant does not contest the finding of inadmissibility for misrepresentation of material facts, which is established in the record. The relevant issue on appeal is whether the Applicant has established extreme hardship to her spouse, as required to qualify for a waiver of inadmissibility under section 212(i) of the Act and, if so, whether she merits the waiver as a matter of discretion.

In support of her waiver request, the Applicant submitted a letter that the Director found did "not articulate what specific hardship [her] spouse would suffer" if the waiver was not granted. The Director acknowledged that the Applicant was experiencing a high-risk pregnancy, with due date of the baby unspecified, and acknowledged character references supporting favorable factors to be considered in the exercise of discretion. However, the Director denied the waiver and did not reach

the discretionary analysis, finding that the Applicant did not meet her burden of establishing extreme hardship to her spouse.

On appeal, the Applicant provides an updated statement from the Applicant's spouse, a birth certificate of the couple's son born after the high-risk pregnancy in [redacted] 2022, numerous earnings statements for the spouse, and proof of the spouse's child support payments for two children. The Applicant's spouse is supporting himself, his wife, the baby, two minor children, and pays child support of two children from a prior relationship.

In the Applicant's spouse's letter, he states he just started a new job and has stress struggling to support seven people. The Applicant's spouse's earnings statements show his hours vary week to week and he has worked for different employers in 2022 (not simultaneously).

For the most part, the Applicant's spouse works 40 hours per week plus extensive overtime. At his current job, the spouse earns $28.00 per hour for 40 hours per week (annualized, that is approximately $58,240.00) plus overtime at a rate of $42 per hour. The last earnings statement provided is for the pay period ending late November 2022 showing a year-to-date gross pay for his current employer in the sum of $11,332.02, breaking down to $7,686.00 regular pay plus $3,646.02 overtime. The submitted paystubs show an additional 4 to 18 hours of overtime per pay period at the higher pay rate. The Applicant's spouse's hours are not consistent from week to week, but it appears he mostly works a 40-hour week with an additional 4 to 18 hours of overtime. The overtime is frequently significant. For example, the earnings statement for the end of July 2022 shows year-to-date working at regular pay for 471 hours and 68.5 overtime hours at a higher rate of pay.

In addition to supporting himself, the Applicant and three children who reside with him, the Applicant's spouse also pays significant child support in the sum of $1000 per month ($940 monthly payment plus $60 arrears payment). The Applicant's spouse states that he "would not be able to keep full time employment" if his wife is removed and without working the hours he works, including substantial overtime, he will not be able to support his family.

In addition to new financial documentation, the record on appeal includes new medical documentation for the Applicant identifying "possible postpartum depression." The medical record includes a note that someone "advised the patient that sharing her depressive feelings was a good first step." The Applicant's spouse's statement on appeal expresses worry for the Applicant's medical care should she relocate to Jamaica, which is a factor to be considered in the aggregate hardship on the Applicant's spouse. A new birth certificate submitted on appeal shows the Applicant's spouse is the father of the Applicant's baby. The Applicant's spouse states that their child will remain in the United States if the Applicant is removed and that will cause financial challenges for him and prevent him from working full time.

Accordingly, we will return the matter to the Director to consider the new claims and evidence of extreme hardship in the first instance and to redetermine whether the Applicant has established eligibility for a waiver of her inadmissibility and warrants the waiver in the exercise of discretion.

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