U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24001292

Date: FEB. 10, 2023

Appeal of Newark, New Jersey Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Ecuador, 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).

The Director of the Newark, New Jersey Field Office denied the application, concluding that the record did not establish that the Applicant's U.S. citizen spouse, her qualifying relative for purposes of the waiver application, would experience extreme hardship if the waiver was not granted. The matter is now before us on appeal. The Applicant argues the Director erred in finding the hardship the Applicant's spouse would experience would not rise to the requisite level.

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 dismiss the appeal.

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).

The Applicant entered the United States on or about September 22, 1997, under the Visa Waiver Program using a Spanish passport. The Applicant is not a Spanish citizen, nor does she claim to be, and the passport upon which she obtained admission into the United States was not lawfully issued to her. As a result, she is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission into the United States through fraud or misrepresentation and requires a waiver of inadmissibility.

The Applicant must demonstrate that denial of the waiver 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 does not contain a statement from the Applicant's spouse indicating whether he intends to remain in the United States or relocate to Ecuador 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.

Documentation submitted with the waiver application includes: affidavits from the Applicant, her spouse, and others; copies of medical records for the Applicant's spouse; copies of federal income tax returns; an employment verification letter for the Applicant; copies of bank account statements; copies of utility bills; copies of insurance policy documents; copies of automobile ownership documents; and copies of country conditions evidence related to Ecuador. On appeal, the Applicant submitted additional documentation including: a letter indicating the Applicant's spouse receives a pension from a labor union; a letter confirming the Applicant's employment as of August 2021; copies of 2020 federal income tax returns and related documents; and a letter from a doctor, dated August 25, 2021, describing the Applicant's spouse's medical condition. The Applicant contends her spouse would experience medical, financial, and emotional hardship upon their separation.

Regarding medical hardship, the Applicant states her spouse is in poor physical health. She claims she aids with his medical conditions and related care. The Applicant indicates she accompanies her spouse to his medical appointments and ensures he takes his required medications and complies with his strict diet to control his conditions. The record contains medical documentation limited to a letter from a treating physician and a referral for physical therapy. On appeal, the Applicant has submitted an additional letter from the treating physician. The letter from the spouse's physician indicates the Applicant's spouse reported to the physician that he has multiple medical issues including "hypertension, COPD, Gastro-esophageal reflux disease and Hyperlipidemia." The physician further stated that he diagnosed the spouse with Vitamin D deficiency. The documentation before us does not contain information concerning specific prescribed treatments or medications, prognoses with continued treatment, or explanation of the need for assistance. Although the record indicates the

Applicant assists the spouse with managing his diet and medications, the record does not indicate the spouse suffers from a serious medical condition that requires ongoing assistance from the Applicant. Further, the Applicant's affidavit submitted with her Form I-601 indicates her spouse has an adult son who is a U.S. citizen and lives in the United States; it is not evident why he would be unable to aide in his father's care should the Applicant be unable to do so.

Concerning financial hardship, the Applicant argues both that the Director failed to "take into account the dire economic situation currently in Ecuador" and that the Applicant's household financial situation has changed, such that the financial hardship her spouse would suffer has now increased. Specifically, the Applicant cites her spouse's retirement and her own employment commencing since the Director's decision was issued. The Applicant submitted a letter confirming her spouse's retirement, a letter confirming her own employment, 2020 income tax returns and related documents, and an updated letter from her spouse's doctor. The letter the Applicant submitted on appeal that confirms her spouse's retirement also indicates he draws a pension. However, the documentation submitted with the waiver and now on appeal does not indicate the Applicant's spouse would be unable to financially support himself in the event of separation. The Applicant has not addressed whether her spouse has any other source of income available, such as social security, retirement accounts, or other forms of savings. Finally, although the Applicant's spouse retired and is 62 years of age, the evidence does not establish he would be unable to work in the future to fully support himself. As such, the record does not sufficiently establish the Applicant's spouse's current financial circumstances. Therefore, we acknowledge that the spouse's finances may be negatively impacted by the Applicant's relocation to Ecuador. However, the record does not indicate that the spouse would be unable to provide for himself if the Applicant were denied admission to the United States.

As to emotional hardship, the Applicant claims her spouse would suffer significant emotional distress if her waiver application were denied. She submitted a new letter from her spouse's physician, which indicates the Applicant's spouse suffers from depression and has been prescribed medication to treat it. Although we acknowledge the statements of the Applicant, her spouse, and his physician regarding the emotional strain separation may cause, the record does not contain further detail about the impact of any emotional hardship the Applicant's spouse may experience in his daily life.

Although we recognize that the Applicant's spouse may face some hardship upon separation, based on the record, we cannot conclude that when considered in the aggregate, the hardship would go beyond the common results of separation from a loved one 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.