U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23773247

Date: MAR. 1, 2023

Appeal of Los Angeles, CA 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 section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for misrepresentation of material facts. 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 Los Angeles, CA Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility.

The Director of the Los Angeles Field Office denied the application concluding the Applicant did not establish extreme hardship to their U.S. citizen spouse, her only qualifying relative. The Director further determined discretion should not be exercised in her favor. On appeal, the Applicant submits a brief asserting their eligibility based on the record. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (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). The matter is now before us on appeal. 8 C.F.R. § 103.3. 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 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.

With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. Matter of

Chawathe, 25 I&N Dec. at 376. In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. 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).

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).

The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. Id. at 301. The favorable considerations include family ties in the United States, residence of long duration in this country while in compliance with our immigration laws (particularly where residency began at a young age), evidence of hardship to the foreign national and their family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. Id.

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. 369, 376 (AAO 2010). 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

A. Background

The record establishes that the Applicant is a 60-year-old citizen of Korea and owner of a restaurant with $7 million in sales and 48 employees. The Applicant does not contest the Director's determination that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact, and the Applicant, who is seeking adjustment of status,

therefore filed this Form I-601 to waive her inadmissibility. In denying the Form I-601, the Director determined that the Applicant was not eligible for a waiver under section 212(i) of the Act because she had not established extreme hardship to her U.S. citizen spouse. The Applicant's spouse, age 59, is a dentist who owns a dental clinic that employs 9 people and has 3,000 patients.

The Applicant submitted articles about country conditions in Korea, including three articles comparing actual conditions in Korea to their portrayal in the fictional movie Parasite, a declaration from the Applicant, two declarations from the Applicant's spouse,[1] a psychosocial evaluation of the spouse, financial and business employment records, medical records of the spouse's parents, letters of support, fingerprint report, and photos.

B. Extreme Hardship

An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant or 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, supra, at B.4(B). In the present case, the record does not contain a clear statement regarding whether the spouse would remain in the United States or relocate to Korea with the Applicant if she is denied admission. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship upon both separation and relocation.

On appeal, the Applicant submits a brief contending that she established eligibility for the waiver based on extreme hardship in two scenarios: whether the couple separates or whether the couple jointly relocates to Korea. The Applicant states, "that extreme hardship can be found even when the qualifying relative would experience a relatively low level of hardship." The Applicant contends that "extreme hardship" is less hardship than other tiers of hardship in the Immigration and Nationality Act (INA), "exceptional and extremely unusual hardship" and "exceptional hardship." The Applicant also disagrees with the Director's weighing of the hardship presented stating, "[i]n the decision the Director wrote on the reasons he denied the waiver, it disregarded all evidence without giving due weight.."

Upon de novo review, we find that the record does not demonstrate that the Applicant's spouse, who has been operating a dental practice, teaching continuing dental education, and teaching weekly classes to students at University of [redacted] Dental School, would be unable to afford his primary expenses; nor has the Applicant, a restauranteur, demonstrated that she could not find employment in Korea. The Applicant and her spouse each own a revenue-generating enterprise, a restaurant with $7 million in sales, and dental practice with 9 employees. Accordingly, the evidence does not show that the spouse would face financial strain going beyond the hardship typically resulting from separation from a spouse.

[1] The spouse prepared an 8-page declaration in his native language, Korean, which is accompanied by a certified translation ("Spouse's Declaration"). In addition, the spouse prepared a one-paragraph Declaration of Extreme Hardship in Two Scenarios: if the couple is separated or if they jointly relocate to Korea.

Upon de novo review, we also agree that the evidence of emotional hardship for separation and relocation does not meet the Applicant's burden. The Applicant submitted a lengthy psychosocial evaluation by Dr. K-[2], a doctor who spoke to Applicant's spouse once and indicated that the Applicant's spouse did not previously seek psychological therapy. This is inconsistent with the spouse's declaration where he states that he received long term psychological treatment with Dr. G-. The Applicant also submitted a letter from Dr. G- who corroborates the Spouse's Declaration stating that Dr. G- served as a therapist for the Applicant and her spouse in joint and individual counseling since 2020. Dr. G- states, [b]oth [Applicant and spouse] have been very open to therapy and looking at issues." On appeal, the Applicant does not address these inconsistencies identified by the Director and we agree with the Director's determination that Dr. K-'s evaluation be given less evidentiary weight due to these inconsistencies.

We acknowledge that the Applicant's spouse would experience difficulties if separated from the Applicant. However, the totality of the evidence is insufficient to show that these hardships, when considered in the aggregate, would exceed that which is usual or expected due to separation from a loved one and rise to the level of extreme hardship. As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to her spouse both upon separation and relocation.

Similarly, we agree upon de novo review that the Applicant's scant evidence of hardship caused by relocation does not meet her burden. The Applicant's spouse has resources to provide care for his aged parents. The Applicant and her spouse are natives of Korea and speak the language. On appeal, the Applicant's brief written by counsel, asserts the impact of termination of the dental practice as a "tremendous loss for the society." Assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980)). Moreover, our inquiry is whether there is extreme hardship on the qualifying relative. The impact on society is not relevant to the extreme hardship inquiry.

As the Applicant has not established extreme hardship to her spouse in the event of separation or relocation, we cannot conclude that she has met this requirement. The waiver application will therefore remain denied.[3]

C. Discretion for Purposes of a Section 212(i) Waiver

We adopt and affirm the Director's decision with respect to discretion, with the comments below. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); see also Alaelua v. I.N.S., 45 F.3d 1379, 1382 (9th Cir. 1995).

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[2] Initials are used to protect the identity of the individual.

[3] Having found the Applicant statutorily ineligible for relief, we decline to reach and hereby reserve the issue of whether the Applicant is inadmissible under section 212(a)(6)(E)(i) (alien smuggling) of the Act. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

The Applicant disagrees with the Director's balancing of discretionary factors in the established record, stating "the Director's analysis of the discretionary factors of [the Applicant's] case consists of (sic) conclusory sentence." The Applicant's characterization of the discretionary analysis consisting of one conclusory sentence is inaccurate. The Director's discussion of the discretionary analysis was detailed. In addition to the Applicant's own immigration fraud to obtain immigration benefits, she was involved in an F-1 visa fraud scheme. A large-scale immigration fraud scheme is a heavily weighted adverse factor. Immigration-related fraud strikes at the heart of the country's immigration laws and undermines the integrity of the entire system. In Re Krivonos, 24 I&N Dec. 292, 293 (BIA 2007). The Director did not err in denying the application as a matter of discretion.

III. CONCLUSION

As the Applicant has not met the extreme hardship requirement, we conclude she has not established that she is eligible for a Section 212(i) waiver. The Applicant also does not warrant a waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.