U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25273374

Date: MAR. 6, 2023

Appeal of Fort Myers, FL 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 Director of the Fort Myers, Florida Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility, concluding the Applicant did not establish extreme hardship to his U.S. citizen spouse, his only qualifying relative. On appeal, the Applicant submits a brief asserting their eligibility based on the record. 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 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. There is a 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. If the noncitizen demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. 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).

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 the applicant's evidence demonstrates 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/legal-resources/policy-memoranda. In the present case, the record is unclear whether the Applicant's spouse would remain in the United States or relocate to Haiti if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

II. ANALYSIS

The Applicant does not contest his inadmissibility, as described in the Director's decision, which we incorporate here. The Applicant's spouse states that the Applicant has a close relationship with her and their two children. She stated the Applicant has a good job as an environmental services tech and that the Applicant is the handyman, mechanic, and landscaper in the house. The Applicant's spouse says that she will not be able to pay the mortgage, buy food and pay expenses if she is separated from the Applicant. The Applicant's spouse says that she cannot envision life without the Applicant, especially with the Applicant in Haiti in the state that Haiti is in right now.

The Applicant's spouse is the primary wage-earner. In the years 2018, 2019, and 2020, her adjusted gross income for the claimed household size of five exceeded United States federal poverty guidelines set by the United States Department of Health and Human Services. For example, in 2020, the Applicant's spouse's adjusted gross income was $45,973.00 as compared to the poverty threshold of $30,680.00.

Although we are sympathetic to the family's circumstances, we conclude that if the Applicant's spouse remains in the United States without the Applicant, the record is insufficient to show that her hardship would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We also note that the Applicant has been a holder of Temporary Protected Status (TPS) since its inception for Haitians.[1] The record does not show that the Applicant's spouse has any physical or mental health issues that affect her ability to work or carry out other activities. In addition, there is no indication that other family members are unable or unwilling to assist the Applicant's spouse, as needed. Numerous statements from family members indicate that the Applicant's brother and his family live nearby. We note that the couple's children, currently 15 and 10 years old, do not have any

[1] The Department of Homeland Security extended the designation of Haiti for TPS through August 3, 2024.

special needs.[2] Even considering all of the evidence in its totality, the record is insufficient to show that the Applicant's spouse's claimed financial, mental, and physical hardships would be unique or atypical, rising to the level of extreme hardship, if she remains in the United States while the Applicant returns to live abroad due to his inadmissibility.

As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to his spouse both upon separation and relocation to Haiti, where his spouse was born and raised. As the Applicant has not established extreme hardship to his spouse in the event of separation, we cannot conclude he has met this requirement. Thus, we need not reach the question whether relocation would cause extreme hardship on the qualifying relative, and we reserve that issue. Because the Applicant has not demonstrated extreme hardship to a qualifying relative if he is denied admission, we need not consider whether he merits a waiver in the exercise of discretion. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.

[2] Hardship on the couple's children may be considered to the extent it causes hardship the Applicant's spouse, the only qualifying relative in this case,