U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24311984

Date: MAR. 08, 2023

Appeal of San Bernardino, California Field Office Decision

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

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). The Director of the San Bernardino, California Field Office denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, after concluding she was inadmissible under section 212(a)(6)(C)(i) for fraud and misrepresentation, and section 212(a)(9)(B)(i)(II) for being unlawfully present for one year or more and seeking admission within 10 years of the date of her departure, and that the record did not establish that her spouse would suffer extreme hardship. The matter is now before us on appeal. The Applicant claims the Director erred in finding the hardship her spouse would experience did 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.

I. LAW

Section 212(a)(6)(C)(i) of the Act renders inadmissible 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, admission into the United States, or other benefit provided under the Act. Section 212(a)(9)(B)(i)(II) of the Act renders inadmissible any noncitizen who has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States. Sections 212(i) and 212(a)(9)(B)(v) of the Act provide waivers of above grounds of inadmissibility, respectively, if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent of the noncitizen. If a noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. 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). 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).

II. ANALYSIS

As noted above, the Applicant had submitted a Form I-601 to overcome grounds of inadmissibility found in sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act. In support of her Form I-601, the Applicant asserted that her spouse would suffer extreme hardship if he moved to Peru because he would be separated from three of his children from a prior marriage and would not be able to continue with his career in part because he does not speak Spanish and thus would suffer emotional and financial hardship. The Applicant also noted that her spouse was formerly a member of the military and that he was still subject to active duty recall which he could not fulfill if he was living outside the United States. If he remained in the United States, the Applicant expressed concern that her spouse would suffer additional emotional hardship related to his anxiety, post-traumatic stress disorder, and the passing of his previous spouse due to cancer. The Director denied her Form I-601, concluding that neither separation or relocation to Peru would result in extreme hardship to her spouse.

On appeal, the Applicant claims that the Director erred by not considering certain factors, including her spouse's family ties both inside and outside of the United States, conditions in the country to which she would relocate and her ties to that country, the financial impact of departure from the United States, and significant conditions of health and medical care upon relocation. The Applicant highlights that her spouse does not have any family ties in Peru, nor does he speak the language; that medical and human rights conditions in Peru would present significant issues including to their finances and her spouse's mental health. The Applicant alternatively states that the family would suffer from separation, including with regard to supporting his children, and maintaining his employment and emotional well-being.

The Applicant also identifies a change to USCIS policy issued on June 24, 2022, which explains that a noncitizen who seeks admission more than 10 years after their last departure is not inadmissible under section INA 212(a)(9)(B) of the Act regardless of their location during the requisite 10 years or manner of return to the United States. *See generally* USCIS Policy Memorandum PA-2022-15, *INA 212(a)(9)(B) Policy Manual Guidance* 1 (Jun. 24, 2022), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220624-INA212a9B.pdf. Subsequent to this change in policy, the Board of Immigration Appeals has held that noncitizens who are inadmissible for a specified period of time pursuant to section 212(a)(9)(B)(i) of the INA due to their previous unlawful presence and departure are not required to reside outside the United States during the period in order to subsequently overcome the ground of inadmissibility. *Matter of Duarte-Gonzalez*, 28 I&N Dec. 688 (BIA 2023). Thus, while the Director's determination of inadmissibility under this ground may have been correct at the time it was issued in May 2022, the record reflects that the Applicant last left the United States in May 2003 and thus any 10-year period after her last departure would have already expired. The record is sufficient to establish more than 10 years has passed since the

Applicant's last departure. Accordingly, we will withdraw the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Although we have withdrawn the ground for inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, the Applicant does not contest the Director's determination of inadmissibility regarding section 212(a)(6)(C)(i) of the Act and therefore must still establish that her spouse would suffer extreme hardship if she were denied admission. 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 spouse does not clearly indicate whether he intends to remain in the United States or relocate to Peru if the Applicant's waiver application is denied and has presented claims and evidence regarding both scenarios. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation. The Applicant does not submit any new evidence but has submitted copies of documents already in the record.

After reviewing the evidence submitted with the waiver application and on appeal, we agree with the Director's decision that the Applicant has not established the requisite hardship to her spouse. The record as it relates to hardship lacks the specificity and detail needed to make a finding that extreme hardship would result upon separation.

As noted above, the Applicant claims that the family would suffer from separation, especially in relation to the support of their children and her spouse's ability to maintain his employment and emotional well-being. Regarding the well-being of the spouse, the Applicant has reproduced a statement from November 2021 wherein her spouse states that the Applicant helps him with episodes of anxiety and lack of sleep that he experiences due to post-traumatic stress disorder. Additional evidence includes a letter from a therapist briefly stating that the Applicant and her spouse have received services since May 2015 including psychotherapy to address a variety of interpersonal and familial issues; that the family has expressed anxiety and stress associated with the Applicant's immigration status; and that the spouse had moderate symptoms of anxiety that are recurrent and contribute to exacerbation of post-traumatic stress. The letter, however, does not provide sufficient detail regarding the frequency or severity of any symptoms or a specific treatment plan. The Applicant has not provided other medical documentation that clarifies the nature and degree of her spouse's anxiety or post-traumatic stress, how the conditions affect his daily activities or employment, or to what degree he is dependent on her to alleviate his symptoms. Thus, while the Applicant has shown her spouse suffers from anxiety and post-traumatic stress, absent an explanation in plain language from a treating physician that describes the exact nature and severity of any current condition and provides a description of any treatment or specific family assistance needed, we are not in the position to reach conclusions regarding the severity of any mental health issues or necessary treatment. We also respect the role the Applicant plays by caring for their children and home, especially when her spouse is on business trips, however their two youngest children are now 19 and 17 years old, which indicates their dependence on the Applicant may be less than in the past, and the Applicant has not

otherwise described with sufficient detail how circumstances associated with home maintenance or childcare would be unusual or beyond that which would normally be expected upon separation. When considering the above factors in the aggregate, the Applicant has not established by a preponderance of the evidence that any hardship he would face as a result of separation rises to the level of extreme hardship.

III. CONCLUSION

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. As the Applicant has not established extreme hardship to her spouse in the event of separation, she has not met this requirement. While the brief submitted on appeal also addresses hardship the spouse would undergo if he were to move to Peru, because the failure to establish extreme hardship upon separation is dispositive to this case, we need not address the relocation scenario and hereby reserve the issue. *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"). Similarly, because the Applicant has not demonstrated extreme hardship to a qualifying relative if she is denied admission, we need not consider whether she merits a waiver in the exercise of discretion.

ORDER: The appeal is dismissed.