U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 20822747

Date: MAR. 08, 2023

Appeal of New York, New York Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Trinidad and Tobago currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the New York, New York Field Office denied the application, concluding that the record did not establish that the Applicant's qualifying relatives, his wife and mother, would experience extreme hardship if the application were denied, and that the Applicant had not established that he warrants a favorable exercise of discretion. 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.

Any noncitizen who seeks to procure, sought to procure, or has procured a benefit under the Act by fraud or willfully misrepresenting a material fact is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(i).

Individuals found inadmissible for fraud or misrepresentation may seek a discretionary waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i). This waiver is available if denial of admission would result in extreme hardship to a United States citizen or LPR spouse or parent.

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 does not dispute the finding of inadmissibility, which is supported by the evidence of record. The Applicant entered the United States on June 4, 2004, using a B-2 nonimmigrant visa. On July 20, 2004, the Applicant filed an immigrant visa petition based on his purported marriage to a U.S. citizen, E-B-. On November 9, 2004, the Applicant received conditional LPR status based on the purported marriage.

In 2012, the Applicant married his current wife, a U.S. citizen, and in 2017, she filed a Form I-130, Petition for Alien Relative, on his behalf, which was approved. During his visa interview at the Queens, New York Field Office, the Applicant stated that his 2004 visa application included a falsified marriage certificate, and that he had never actually been married to E-B-. He was found inadmissible under section 212(a)(6)(C)(i) of the act for procuring a benefit under the Act by fraud or willfully misrepresenting a material fact. He now seeks a discretionary waiver of this inadmissibility under section 212(i) of the Act based on extreme hardship to his wife and mother, who are both U.S. citizens.

An applicant may show extreme hardship in two scenarios: 1) if the qualifying relatives remain in the United States separated from the applicant, and 2) if the qualifying relatives relocate overseas with the applicant. Establishing extreme hardship under both of these 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 relatives certifying under penalty of perjury that the qualifying relatives would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. *See generally* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual. In the present case, the record does not include such statements specifying whether the Applicant's wife and mother would remain in the United States or relocate to Trinidad and Tobago if the Applicant's waiver application is denied. The Applicant must therefore establish that his wife and mother, in the aggregate, would experience extreme hardship upon both separation and relocation. *Id.*

The Director concluded that the Applicant had not established that if his application were denied, his qualifying relatives would undergo extreme hardship. On appeal, the Applicant submits a brief stating that the Director's decision failed to fully consider the provided evidence and the hardships his qualifying relatives would undergo if his application were denied. Upon review, while we are sympathetic to the circumstances of the Applicant's family, we conclude that if his qualifying relatives remain in the United States without the Applicant, the record does not establish that their hardship would rise beyond the common results of removal to the level of extreme hardship.

The Applicant's brief on appeal emphasizes that if he were to leave the United States, his sons and stepdaughter would lose their father, and that their distress would in turn cause hardship for his wife.[1] The record indicates that the Applicant's stepdaughter was physically and verbally assaulted by her biological father in 2017, and that she obtained a temporary order of protection against him. It also indicates that the Applicant has a close and loving relationship with his stepdaughter, who views him as a safe father figure. However, while we acknowledge the emotional hardship associated with separation from a close family member, the Applicant has not sufficiently established that if he were removed, his stepdaughter's distress would cause extreme hardship to his wife.

The record indicates that one of the Applicant's sons has asthma. According to the brief provided on appeal, he is required to carry an inhaler at all times, and the stress of separation from his father could exacerbate his condition and make it more difficult for his mother to care for him. To support this claim, the Applicant initially submitted documentation from his son's doctor's visit in 2018, which provides care instructions for the next few days and instructs the family to follow up with their primary care doctor. The record also provides general documentation about asthma which states that strong emotions such as stress are one of several common triggers for asthma attacks. However, it is not apparent from the record that the Applicant's son's condition is triggered by strong emotions, as opposed to other triggers such as exercise or tobacco smoke. Additionally, while the record includes a 2007 article stating that young people with asthma are twice as likely as their peers to suffer from depression, there is no documentation indicating that the Applicant's son is depressed. The record does not establish that if the Applicant were to move abroad, his son's health would worsen in such a way as to cause extreme hardship to the Applicant's wife.

Regarding economic hardship, we acknowledge that the Applicant is his family's sole wage earner, and that his wife has less than a high school education and has not worked since 2009. In her statement provided with the initial filing, the Applicant's wife states that she has no significant professional skills and would be unable to afford the family's mortgage as well as other expenses on her own. The record includes documentation of the family's mortgage, utility bills, and income. It also indicates that the family is covered by the Applicant's job-based health insurance. However, while various support letters from family members in the application state that the Applicant would have difficulty finding work in Trinidad and Tobago, the Applicant is in his 40s, in good health, and trained as an elevator mechanic. Given these circumstances, he has not submitted sufficient documentation establishing why he would not be able to financially support his family from abroad. It is further noted that the Applicant's wife has many family members in the United States who may be able to assist her financially. The record does not establish that the Applicant's wife would undergo extreme economic hardship upon separation.

On appeal, the Applicant states that the Director failed to consider his mother's long-term residency in the United States and the fact that her entire extended family resides there. However, as noted above, in order to demonstrate eligibility, the Applicant must establish that extreme hardship would occur both upon separation and relocation. While relocating to Trinidad and Tobago would separate the Applicant's mother from the rest of her family and her long-term home, the same hardship would not occur if she were to remain in the United States. Instead, she could continue to reside in her home

[1] While the Applicant's U.S. citizen sons and stepdaughter are not qualifying relatives for the purposes of section 212(i) of the Act, their circumstances may be considered as part of the extreme hardship analysis for the Applicant's wife.

and to have their help and support. She would also be able to continue working as a home health aide to support herself financially.

The Applicant further notes that his mother's sister recently passed away and that her brother has poorly controlled diabetes, and that if the Applicant had to leave the United States without her it would cause her further emotional hardship. We acknowledge that the Applicant and his mother have a close relationship, and that she would undergo emotional hardship if she were separated from the Applicant. However, the record is insufficient to establish that this hardship would rise beyond that which is normally associated with removal to the level of extreme hardship. *See Matter of Pilch*, 21 I&N Dec. at 630-631.

The Applicant has not established that in the event of separation, his qualifying relatives' hardships, considered in the aggregate, will rise to the level of extreme hardship. As the Applicant has not established extreme hardship in the separation scenario, we need not consider the relocation scenario. *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 issue of extreme hardship is dispositive, we need not reach the issue of whether the Applicant merits a positive exercise of discretion and hereby reserve it. *Id.* The application will remain denied.

**ORDER:** The appeal is dismissed.