U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25136505

Date: MAR. 23, 2023

Appeal of Los Angeles, California 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).

The Director of the Los Angeles, California Field Office denied the application, finding that the Applicant had not established that her U.S. citizen spouse, the only qualifying relative, would suffer extreme hardship upon her removal from the United States. The matter is now before us on appeal. 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.

A 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 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, a native and citizen of China, was found inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation. The Applicant does not contest inadmissibility on appeal. Thus, the Applicant must seek a waiver of this inadmissibility. The issues on appeal therefore are whether the Applicant has established extreme hardship to a qualifying relative and if so, whether she merits a favorable exercise of discretion. We have considered all the evidence in the record and conclude that the claimed hardships to the Applicant's spouse do not rise to the level of extreme hardship when considered both individually and cumulatively.

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 of these 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 establish whether the Applicant's spouse intends to remain in the United States or relocate to China with the Applicant if the waiver application is denied. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

The Applicant's spouse asserts that he will experience emotional, medical, and financial hardship were he to remain in the United States while the Applicant relocates abroad. He states that he married the Applicant in 2014 and he cannot imagine a prolonged separation from her. He also maintains that he has been diagnosed with anxiety and depression and without his spouse's daily presence and support, his symptoms will worsen and he will experience great psychological distress. The Applicant's spouse also states that he would worry about his wife's safety were she to relocate to China.[1]

On appeal, the Applicant has not established that her spouse's hardships that would result from their separation, considered individually and cumulatively, would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship. The spouse's affidavit indicates generally that the Applicant is emotionally supportive of him, but the record does not establish that separation from the Applicant would affect his ability to function in his daily life and meet his work and family responsibilities. The mental health evaluation from 2020, more than two years prior to the instant appeal filing, offers little detail to convey the degree of emotional hardship the spouse would experience in the Applicant's absence. Nor has the Applicant submitted documentation on appeal from her spouse's treating physician detailing his current medical and/or mental conditions, the treatment plan, and what hardships he would experience were the Applicant specifically to relocate

[1] On appeal counsel maintains that the Applicant and her spouse live with his parents and the Applicant provides emotional and medical support to them while the Applicant's spouse works but were the Applicant to relocate abroad, her in-laws would experience hardship that in turn would cause the Applicant's spouse hardship. 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)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations We note that the Applicant's spouse's affidavit and the medical documentation pertaining to the Applicant's in-laws do not provide detail on what role the Applicant specifically plays in her in-law's daily care, to support counsel's assertion that the Applicant's spouse will experience hardship with respect to his parents were the Applicant to relocate abroad.

abroad. The record also establishes that the Applicant's spouse has a support network in the United States, including his parents, siblings, nieces, and nephews; the Applicant has not established that they would not be able to provide support to her spouse as needed. Nor does the record establish that the Applicant's spouse is unable to travel to China to visit his spouse, as he has done in the past.

As for the financial hardship referenced, the Applicant has had not submitted any documentation on appeal establishing her and her spouse's current income, assets, and liabilities, to establish the household's complete financial picture. The Applicant has also not submitted any documentation to establish that she specifically will not be able to support herself in China; we note that the Applicant's parents reside in China and the record does not establish that they would not be able to help her if needed. Nor has the Applicant established that her spouse's parents or siblings are unable to assist her spouse financially as needed. While we acknowledge that the Applicant's spouse may experience some financial hardship during the Applicant's absence, the Applicant has not established on appeal that separation would affect her spouse's current ability to meet his responsibilities to such an extent that it would cause him extreme hardship. As for the Applicant's spouse's concerns about his wife's safety in China, the Applicant was born and raised in China; she did not come to the United States until she was in her thirties. The record does not establish what hardships, if any, she experienced in China prior to coming to the United States, to support the assertion that her spouse would be worried about her safety and well-being upon return to her native country.

The evidence in the record is insufficient to establish that the spouse's hardships, considered individually and cumulatively, would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship due to separation from the Applicant. As the Applicant has not established that her spouse would experience extreme hardship, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. Section 291 of the Act, 8 U.S.C. § 1361. Here, she has not met that burden.

ORDER: The appeal is dismissed.