U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26032004

Date: MAY 12, 2023

Appeal of Lawrence, Massachusetts Field Office Decision

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

The Applicant, a native and citizen of Guatemala, 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 Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. 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 Lawrence, Massachusetts Field Office denied the application, concluding that the record did not establish that the Applicant's qualifying relative – his U.S. citizen spouse – would suffer extreme hardship if his waiver were denied. The matter is now before us on appeal. 8 C.F.R. § 103.3. The Applicant argues that he provided sufficient evidence to establish his spouse would suffer the requisite level of hardship and that he merits a favorable exercise of USCIS' discretion.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *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, 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 that U.S. Citizenship and Immigration Services (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).

Once the noncitizen demonstrates the requisite extreme hardship, they must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the noncitizen 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).

II. ANALYSIS

The Applicant does not contest his inadmissibility, as described in the Director's decision, which we incorporate here.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case his U.S. citizen spouse. 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. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (providing, as guidance, the scenarios to consider in making extreme hardship determinations). Demonstrating 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. *See id.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002)). 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. *See id.* In the present case, the record is unclear whether the Applicant's spouse would remain in the United States or relocate to Guatemala 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.

The Applicant's spouse states that she and the Applicant have been married since [redacted]2019, but claims they have been together as a couple for many years, and they have two children together, who are 27 years old and 21 years old. She also has a 30-year-old son from a previous relationship. The Applicant's spouse explains she works for the U.S. Post Office in some capacity, and she previously worked as a bus monitor for the local public schools. No information was provided on the Applicant's spouse's earnings, either current or previous; however, she claims she will suffer financial hardship without the Applicant's assistance and support. The Applicant works as a truck driver, and he provided paystubs from his employer, where he earns about $1,500 per week in commission. The Applicant

has also provided an evaluation of his spouse by a psychologist, which indicates the spouse has reported stress-related symptoms including insomnia, anxiety, forgetfulness, and hypervigilance.

The Applicant concurrently filed his waiver application and a Form I-485, Application to Register Permanent Residence or Adjust Status. The Director denied the waiver application because the Applicant did not establish his U.S. citizen spouse would suffer extreme hardship if he were denied admission to the United States. In denying the waiver application, the Director made an alternate determination that even if the Applicant had established his spouse would experience extreme hardship, he did not merit a favorable exercise of discretion.

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. The record includes a psychological evaluation describing the Applicant's spouse's reported symptoms including, but not limited to, insomnia, forgetfulness, and hypervigilance. Although she has experienced anxiety and related symptoms, the record does not show that the Applicant's spouse's situation, or the symptoms she is experiencing, are unique or atypical compared to others in similar circumstances. The record does not show that she has any physical or mental health issues that substantially affect her ability to work or carry out other activities, or that she requires the Applicant's assistance as a result. She reports persistent knee pain, but no medical records related to this issue have been submitted, nor has she reported it preventing her from continuing to work.

The documentation submitted with the waiver and now on appeal also does not establish the Applicant's spouse would experience financial hardship in the Applicant's absence. Although the Applicant claims he is employed and contributes to the household finances, the record does not contain sufficient evidence to provide a complete picture of the couple's financial obligations and individual income. As there is limited evidence of the Applicant's financial contributions to the household and his spouse's total income, as well as a full accounting of their expenses, we are unable to determine the extent to which his spouse's finances may be negatively impacted by his relocation to Guatemala. In addition, there is no indication that other family members – specifically the Applicant's adult children – are unable or unwilling to assist the Applicant's spouse, as needed. In fact, the only tax return evidence in the record appears to be that of one of the adult children. Without more information and a complete representation of the couple's financial situation, we cannot find the Applicant has established his spouse would suffer financial hardship if they were separated upon his return to Guatemala.

Regarding the Applicant's children, although their hardship may be considered to the extent it causes hardship to the Applicant's spouse, the only qualifying relative in this case, we note that the couple's children are all adults, and statements from the Applicant's spouse and their children in the record indicate they are in good health and do not have any special needs. Based on the evidence in the record, it is not clear that the adult children would be unable or unwilling to assist the Applicant's spouse such that the hardship she experiences would be reduced. We acknowledge separation from the Applicant will likely cause his adult children emotional hardship, which is a factor we have considered to the extent it will affect the Applicant's qualifying relative – his spouse. However, even considering all of the evidence in its totality and taken in the aggregate, the record remains insufficient to show that the qualifying relative'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 Guatemala. As the Applicant has not established extreme hardship to his spouse in the event of separation, we cannot conclude he has met this requirement. Because the Applicant has not demonstrated extreme hardship to his 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.