U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26903027

Date: SEP. 11, 2023

Appeal of Tucson, Arizona Field Office Decision

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

The Applicant, a native of and citizen of Mexico 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. *See* 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. *Id.*

The Director of the Tucson, Arizona Field Office denied the application, concluding that the record did not establish that the Applicant's U.S. citizen spouse would experience extreme hardship as a result of separation from the Applicant. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant argues that she is not inadmissible or, in the alternative, that her spouse would experience extreme hardship if she were denied admission to the United States.

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 U.S. citizen or LPR 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 USCIS should favorably exercise its discretion and grant the waiver. *Id.* 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. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual. 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.* 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.* Here, the Applicant's spouse indicates that relocating to Mexico is not a viable option and states that if the application is denied that the couple would be forced to separate. Therefore, the Applicant must establish extreme hardship upon separation from her spouse.

II. ANALYSIS

A. Inadmissibility

On her Application to Register Permanent Residence or Adjust Status (Form I-485), filed in connection with the instant waiver application, the Applicant responded yes to part 8 question 65 which states: "Have you EVER lied about, concealed, or misrepresented any information on an application or petition to obtain a visa, other documentation required for entry into the United States, admission to the United States, or any other kind of immigration benefit?" In the supplemental information on the Form I-485 the Applicant wrote that at the time of her B1/B2 visa renewal she "was already residing in the U.S. and didn't disclose this information on my visa application." Based in part on this information and the answers provided during her interview, the Director determined that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act and issued a Notice of Intent to Deny (NOID). In response to the NOID, the Applicant filed the current Form I-601 with supporting evidence and continued to argue that she was not inadmissible. The Director determined that the Applicant had knowingly provided a foreign address that was not her place of residence to the U.S. Department of State when renewing her Border Crossing Card. The Director further determined that the Applicant had not met her burden of proof in establishing that her U.S. citizen spouse would experience extreme hardship if she were denied admission to the United States

On appeal, the Applicant argues that she is not inadmissible because there is no record of what address she used on her non-immigrant visa application and that she cannot have been said to be residing in the United States because she dutifully abided by the terms of the border crossing card by traveling to Mexico once every 30 days between 1996 and 2009. In support of this argument, the Applicant

submits an affidavit from a former Immigration Services Officer, J-N-[1], in which he claims that the Applicant's "'free' admission" of living in the United States at the time of the renewal of her Border Crossing Card and not informing the Department of State of the same did not, in itself, create a bar to admission. He emphasizes that any previous declaration of the Applicant's intent "is nullified by her return to Mexico in a timely manner in accordance with" her Border Crossing Card.

This argument is unpersuasive. A misrepresentation is material under section 212(a)(6)(C)(i) of the Act when it tends to shut off a line of inquiry that is relevant to the foreign national's admissibility and that would predictably have disclosed other facts relevant to their eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-*, 27 I&N Dec. 105 (BIA 2017). A willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. *Parlak v. Holder*, 578 F.3d 457 (6th Cir. 2009). Where there is evidence that would permit a reasonable person to conclude an applicant is inadmissible, the Director should find that an applicant has not met their burden of proof unless they are able to successfully rebut the Director's finding of inadmissibility. *See INS v. Elias-Zacarias,* 502 U.S. 478 (1992) (agency fact-finding must be accepted unless a reasonable factfinder would necessarily conclude otherwise). The burden of proof to establish admissibility during the immigration benefit seeking process is always on the applicant. Section 291 of the Act; *see Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978) (providing that under section 291 of the Act, the burden of proof is upon the applicant for admission and that this burden never shifts to the Government).

On the Form I-485, the Applicant stated that she last resided abroad in March 1996. The Applicant has provided no documentary evidence to support her assertions that she maintained her residence in Mexico between 1996 and 2009. Indeed, she herself affirmatively acknowledged that, at the time of the renewal of her Border Crossing Card, she was already residing in the U.S. and "didn't disclose this information on [her] visa application." In determining whether visa applicants are entitled to temporary visitor classification, consular officers must assess whether the applicants have a residence in a foreign country, which they do not intend to abandon; intend to enter the United States for a limited duration; and seek admission for the sole purpose of engaging in legitimate activities relating to business or pleasure. If an applicant does not meet one or more of these criteria, the consular officer must refuse the visa. 9 *Foreign Affairs Manual* 402.2-2(B)(a), https://fam.state.gov/FAM/09FAM/09FAM040202.html. In the current case, the Applicant acknowledges that she provided a foreign address on her application for a border crossing card. In concealing her true place if residence, she cut of a line of inquiry that would have been relevant to the issuance of the border crossing card. She has provided no further evidence or testimony that is sufficient to overcome her own statement that she concealed her residence in the United States at the time of her visa application.

As a result, the Applicant willfully misrepresented a material fact for the purpose of procuring an immigration benefit, has not met her burden of proof to establish that she is admissible to the United States, and therefore requires a waiver of inadmissibility under section 212(i) of the Act.

B. Extreme Hardship

[1] We use initials to protect the privacy of individuals.

As evidence of extreme hardship before the Director, the applicant provided tax returns from 2018 to 2020, an affidavit from the Applicant, an affidavit from the Applicant's spouse, evidence of country conditions in Mexico, letters of support from friends and family, a psychological report for her spouse, non-precedent decisions from the Administrative Appeals Office (AAO) and the Board of Immigration Appeals (Board), medical records for her spouse, a list of family members residing in the United States, a table of monthly expenses, bank statements, and utility statements. The Director determined that the evidence, in the aggregate, did not amount to extreme hardship to her U.S. citizen spouse if they were to separate from one another.

On appeal, the Applicant asserts that her U.S. citizen spouse would experience extreme financial, emotional, and medical hardship if she were denied admission to the United States. As stated above, the Applicant's spouse has stated that if the waiver is denied he and his spouse would be forced to separate. Therefore, the Applicant must establish that her spouse would experience extreme hardship upon separation. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual.

In addition to resubmitting the evidence provided to the Director, the Applicant submits an updated brief and provides an opinion letter from J-N-. The Applicant continues to claim that her spouse would experience extreme economic, emotional, and medical hardship if she is denied admission. In her statement to the Director, the Applicant stated that she has never worked in the United States but supports her spouse by cooking healthy food and making sure that he takes his medicine. She stated that her husband is experiencing deep depression and anxiety and that she supports him emotionally because his family lives in Puerto Rico and is not nearby to help take care of him. She further stated that she would be unable to find employment in Mexico because she has been a mother and homemaker for the past 20 years. In his statement to the Director, the Applicant's spouse stated that the emotional loss of being separated from his spouse would be unbearable, that he relies on the Applicant for moral and psychological support, he would fear for the Applicant's safety in Mexico, that he would be unable to support two households on his current income, and that he has several medical conditions that would worsen if his spouse were to relocate to Mexico.

As evidence to support her claims of medical hardship to her spouse, the Applicant submitted medical records related to her spouse's health conditions. According to the medical documents, the Applicant's spouse has been diagnosed with Early Sick Sinus syndrome, bigeminy, and bradycardia. The most recent documentation relates to a visit with his physician in May 2021 where the Applicant's spouse reported that he was asymptomatic for his Sick Sinus syndrome and reacting well to medication for his hyperlipidemia and hypertension. The doctor indicated that he would not require an additional appointment for another year. Additional medical documents indicate that prior to meeting the Applicant, the Applicant's spouse was able to follow the instructions of his physician, take his medication, and maintain a healthy lifestyle. The medical documentation provided did not indicate that the Applicant's spouse required full time care or that his conditions resulted in an inability to perform daily activities on his own. In his personal statement to the Director, the Applicant's spouse indicates that his current employer provides medical insurance that allows him to receive regular treatment for his conditions. Based on the documentation provided it does not appear that the Applicant's spouse's health conditions would become unmanageable or that he would otherwise experience extreme medical hardship if the Applicant were to be denied admission to the United States.

In addition to her affidavit and the affidavit of her spouse, the Applicant submitted a psychological evaluation for her spouse and letters from her children regarding their close relationship as evidence of emotional hardship. The psychological evaluation diagnoses the Applicant's spouse with a generalized anxiety disorder and depression. The assessor attributed the increase in anxiety and depression of the Applicant's spouse to the Applicant's current immigration status and fear of what might occur in the future if she is denied admission. The assessor ends by recommending that the Applicant's spouse attend counseling to manage his anxiety and depression. There is no indication that the Applicant's spouse has attempted to comply with this recommendation. Both the Applicant and her spouse state that being separated would cause the Applicant's spouse to go into a downward spiral resulting in worsening health and loss of employment. While we acknowledge that the Applicant's spouse has experienced increased symptoms of anxiety and depression as a result of his spouse's immigration status, the emotional consequences of separation from the Applicant do not appear to be over and above those normally associated with separation from a loved one. *See Matter of Pilch*, 21 I&N Dec. at 630-31.

As evidence to support her claims of economic hardship the Applicant provided various bills and a table of monthly expenses. The Applicant states that her spouse is the sole source of income for the family and that he would be unable to support two households on his current income. The Applicant further states that the cost of traveling to visit her would be detrimental to her spouse's finances. We note that the Applicant has indicated she would relocate to [redacted] Mexico, a one-hour drive from [redacted] Arizona, where her spouse currently resides. A review of the record indicates that the Applicant's parents reside in [redacted] and the Applicant has not indicated that her parents are unwilling or unable to support her while she adjusts to life in Mexico. In addition, the Applicant has two adult children and has not provided any indication that they would be unwilling or unable to assist her financially if she were to relocate to Mexico. Moreover, the Applicant has resided in the United States since 1996 and claims to have never been employed in the country. She divorced her prior spouse in 2005 and lived and supported herself in the United States without being employed until her current marriage in 2021. The Applicant has not submitted evidence regarding how she supported herself during this time, or why such support would change or otherwise be unavailable to her upon removal to Mexico.

The Applicant provided country conditions materials related to Mexico and articles regarding crime along the U.S. border. However, the Applicant's spouse has indicated that he will not relocate to Mexico. The Applicant claims that living in Mexico would be dangerous for her and cause her spouse additional anxiety worrying over her safety. We acknowledge the claims that worrying about his spouse's safety would cause extreme emotional hardship, however, it does not appear that this anxiety is any more than would normally be experienced by someone fearing for the safety of a loved one in another country. We also acknowledge the claims that the Applicant's mental health would suffer in Mexico because of her prior experience of being held captive at gun point in the United States. However, hardship to the applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

In conclusion, the totality of the evidence in the record remains insufficient to show that the Applicant's spouse's emotional, financial, and medical hardships considered individually and cumulatively would exceed those which are usual or expected if he remains in the United States and is separated from the Applicant. Because the Applicant has not demonstrated extreme hardship to her

qualifying relative, her U.S. citizen spouse, upon separation, we need not consider she merits a waiver in the exercise of discretion and, therefore, reserve that 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"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). The waiver application will remain denied.

ORDER: The appeal is dismissed.