U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27286288

Date: SEP. 13, 2023

Appeal of the New York, New York Field Office Decision

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

The Applicant, a native of Yugoslavia and citizen of Kosovo 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.

The Director of the New York, New York Field Office denied the application, concluding that the record did not establish that the Applicant's U.S. citizen spouse would experience extreme hardship is he were denied admission. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant asserts that the Director erred in their assessment of the evidence related to extreme hardship.

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. USCIS may waive 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 U.S. Citizenship and Immigration Services 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, neither the Applicant or his spouse indicate whether they intend to separate or relocate to Kosovo if the Applicant is denied admission. Therefore, the Applicant must establish extreme hardship upon both separation and relocation to Kosovo.

II. ANALYSIS

The Applicant does not contest his inadmissibility finding on appeal and we incorporate the Director's inadmissibility finding here, by reference.[1] The Applicant claimed that his spouse will experience extreme emotional and financial hardship if he were to be removed from the United States. With his initial application, the Applicant provided a statement from his spouse, country conditions materials for Kosovo, and a psychological evaluation of his spouse. In her personal statement, the Applicant's spouse stated that she and the Applicant have been together for the past 19 years, that she suffered from abuse in her first marriage and being separated from her spouse would cause extreme emotional hardship. She further stated that the tragic deaths of her brother (age 9) and sister (age 27) have been extremely painful and upsetting events in her life. She stated that her husband provides emotional support and his departure would be overwhelming to her. She went on to state that she has lived in the United States for her entire life and that she would be unable to live in Kosovo due to the economic conditions in the country. The psychological assessment submitted to the Director provided a diagnosis of adjustment disorder with mixed anxiety and depressed mood. The assessor stated that the Applicant's spouse reported that the thought of being separated from her spouse results in trouble sleeping, difficulty focusing, anxiety, and persistent sadness. The assessor provided additional information regarding the Applicant's U.S. citizen child. The Director determined that the evidence provided was insufficient to establish that the Applicant's spouse would experience extreme hardship if the Applicant were denied admission to the United States.

[1] The Applicant attempted to enter the United States using a fraudulent U.S. passport in 1991. This false claim to U.S. citizenship was prior to the enactment of section 212(a)(6)(C)(ii) of the Act. However, the Applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act.

On appeal, the Applicant states that the Director erred in their evaluation of the evidence of extreme hardship and provides an additional statement from the Applicant's spouse, a second psychological evaluation, a mortgage statement, tax documentation, documentation related to the cost of college for the Applicant's son, and country conditions reports for Kosovo. Both the Applicant and his spouse state that during their interview for adjustment of status, the USCIS Immigration Services Officer had to be repeatedly corrected regarding the inadmissibility of the Applicant. The Applicant and his spouse, therefore, believe that the Director's decision was erroneous due to the inexperience of the officer with whom they interviewed.[2] We review our cases de novo and come to an independent evaluation of the evidence provided in support of the waiver request. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, the Applicant has not met his burden of proof in establishing that his spouse would experience extreme hardship upon separation.

In her statement on appeal, the Applicant's spouse re-iterates her claims made to the Director. In addition, she states that she would be unable to support herself financially if the Applicant were to relocate to Kosovo and she would no longer be able to afford her son's college tuition. In support of this statement, she provides tax documents showing general levels of income, a printout with tuition costs and a mortgage statement. While the tax returns indicate that both the Applicant and his spouse contribute to the household finances, loss of the Applicant's income alone is not sufficient to establish that the Applicant's spouse would experience extreme financial hardship. Moreover, the Applicant has not addressed whether his spouse has any other source of income available, such as social security, retirement accounts, or other forms of savings or if the couple has sought alternative sources of funding for their son's college education such as student loans or scholarships. Finally, the Applicant has not provided information regarding the couple's current financial obligations beyond the mortgage statement and printout of tuition costs. As such, the record does not sufficiently establish the current financial circumstances of the Applicant's spouse. We acknowledge that the spouse's finances may be negatively impacted by the Applicant's relocation to Kosovo, however, the record does not establish that the Applicant's spouse would be unable to provide for herself or meet her current financial obligations resulting in extreme financial hardship if the Applicant were denied admission to the United States.

As it relates to emotional hardship upon separation, the Applicant provided a second personal statement from his spouse and a second psychological evaluation on appeal. In her second personal statement, the Applicant's spouse states that the Director did not fully consider the length of their marriage, her history of abusive relationships, and the importance of her spouse's emotional support to overcome the traumatic events of her past. The second psychological evaluation indicates that the Applicant's spouse is suffering from Major Depressive Disorder. The assessor states that the Applicant's spouse is experiencing symptoms of depression and anxiety as a direct result of her spouse's potential removal from the United States. We acknowledge that the Applicant's spouse may experience emotional hardship as a result of separation from her spouse, however, the evidence in the record does not sufficiently establish that the financial and emotional effects of separation from the Applicant would be more serious than the type of hardship normally suffered when one is faced with the prospect of separation from one's spouse. *See Matter of Pilch*, 21 I&N Dec. at 630-31. The initial

[2] The Applicant further argues that the Director denied his application to cover up previous mistakes by USCIS in which he was improperly denied under section 212(a)(6)(C)(ii) for false claim to U.S. citizenship. However, those prior decisions are not the subject of the current appeal and our review is limited to the most recent decision in these proceedings.

psychological evaluation also discusses the effects of separation on the Applicant's U.S. citizen son. However, hardship to a non-qualifying family member may only be considered in as much as it effects the qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002). We acknowledge the negative effects that separating from his father may have on the Applicant's son, however, the Applicant has not demonstrated that the hardship to his son would result in extreme hardship to the qualifying relative, his U.S. citizen spouse.

After a complete review of the record, the totality of the evidence remains insufficient to show that the Applicant's spouse's emotional and financial hardships considered individually and cumulatively would exceed those which are usual or expected if she remains in the United States and is separated from the Applicant. Thus, the Applicant has not shown that his spouse would experience extreme hardship. Because the Applicant has not demonstrated extreme hardship to his qualifying relative, his U.S. citizen spouse, upon separation, we need not consider whether she would experience extreme hardship upon relocation to Kosovo or whether the Applicant merits a waiver in the exercise of discretion and, therefore, reserve those issues. *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.