U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27394111

Date: SEP. 15, 2023

Appeal of Chicago, Illinois Field Office Decision

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

The Applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C.§ 1182(i), to adjust status to that of a lawful permanent resident. 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 Chicago, Illinois Field Office denied the application, concluding that the record did not establish the requisite extreme hardship to his United States citizen spouse, his only qualifying relative. 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.

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. To establish eligibility for a waiver of this inadmissibility the noncitizen must demonstrate, as a threshold requirement, that denial of admission will result in extreme hardship to their U.S. citizen or lawful permanent resident spouse, or parent. 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).

In addition to demonstrating the requisite extreme hardship, the applicant must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

II. ANALYSIS

The Director determined that the Applicant is inadmissible to the United States for fraud or misrepresentation because he obtained his visitor visa by fraudulent means. The Applicant does not contest this determination.[1] The issues on appeal are whether the Applicant has established extreme hardship to his qualifying relative and, if so, whether he merits a waiver as a matter of discretion.

We have reviewed the entire record and conclude that it is insufficient to show that the individual and cumulative hardships to the Applicant's United States citizen spouse would rise to the level of extreme if the Applicant is denied admission.

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 generally* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual (providing guidance on the scenarios to consider in making extreme hardship determinations). 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. *See id.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Gonzalez Recinas*, 23 I&N Dec. 467 (BIA 2002)). The applicant may meet this burden by submitting a statement from the qualifying relative or relatives certifying under penalty of perjury that the qualifying relative or relatives would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. *See id.* Here, the record does not contain a clear statement from the Applicant's spouse indicating whether she intends to remain in the United States or relocate with the Applicant to Nigeria or any another country if the 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 record reflects that the Applicant's spouse is currently 53 years old, and she was born in the United States. She has one minor child who resides with her and the Applicant, and two adult children. In support of the instant waiver request the Applicant submitted a personal statement, a statement from his spouse, A-M-[2], and a psychological assessment conducted by C-E-, a licensed clinical social worker. The Applicant also submitted letters in support of his waiver application from family, friends, his church, information regarding his cab business, and photographs of A-M- in the hospital. In the Applicant's statement, he indicated that when he left Nigeria, he only intended to stay in the United States for two weeks, but while he was visiting, religious and ethnic crises "erupted in violence,"

[1] In a statement submitted with his Form I-601, Application for Waiver of Grounds of Inadmissibility, the Applicant stated that he "presented a letter from someone inviting [him] to the U.S., although [he] did not know who was inviting [him]. The letter of invitation was given to [him] by a Nigerian man who assisted Nigerians in obtaining visas to come to the U.S."

[2] We use initials to protect the identity of individuals.

which resulted in the death of his son, and this made him fear returning to Nigeria. The Applicant stated that he has been married to A-M- since 2011, and that he lives with her and his stepson J-M-, who is now approximately 13 years old. He stated that it would not be feasible for them to come to Nigeria, as they were both born in the United States, and they have no family or friends in Nigeria, and are also unfamiliar with its culture. He contended that his wife would be unable to obtain employment comparable to her employment in the United States and that his stepson would not have the same educational opportunities. Finally, he stated that he has two children in Nigeria who are being cared for by their mother, and noted that if he should obtain permanent residency, he would petition for them to reside with him in the United States.

In A-M-'s statement, she discussed her past, specifically that her parents separated when she was young, and her father passed away when she was 10 years old. She also noted that she suffered sexual abuse by a male babysitter at a young age, and that her mother did nothing to stop the abuse when she tried to tell her and stated that her mother also sexually abused her. A-M- indicated that when her mother remarried, the man she married abused A-M-'s sister, and they were then separated from their mother and placed in foster care. A-M- stated that she lived in three foster homes before moving back in with her mother when she was 15 years old. She discussed when she had her first two children, and then adopted J-M-. A-M- stated that in February 2020, she suffered severe burns on her hands and arms while cooking, which resulted in her hospitalization, which she claimed would leave her unable to work for several months. A-M- contended that if the waiver application was denied, she would suffer extreme hardship because she and the Applicant have created a life together and they jointly care for J-M-, and that they would suffer from a loss of the Applicant's income. She further indicated that she had been suffering from anxiety due to the Applicant's immigration situation, and that this anxiety may have contributed to her cooking accident. A-M- echoes the Applicant's statements that she would not be able to relocate to Nigeria because she and J-M- aren't familiar with the culture and she would not be able to find comparable employment opportunities for herself, or educational opportunities for J-M-.

In the psychological assessment conducted by C-E-, they noted that A-M- was interviewed by phone[3] and indicated that A-M- was suffering from a number of "physical and mental symptoms of extreme stress since initiating the immigration process on behalf of" the Applicant. The assessment stated that A-M- reported experiencing back pain and had symptoms of restless leg syndrome, and that her digestive system had been adversely affected. She further reported that she developed excruciating headaches, and when stressed, developed a rash. The report also indicated that she exhibited symptoms of panic. C-E- noted that A-M- was "very upset" about the possibility of her and the Applicant being separated and that "her heart is breaking" under the stress of having to choose between the Applicant leaving or relocating with him. The assessment further details the information provided by A-M- in her statement regarding her life growing up, her relationship history, and her relationship with the Applicant. The assessment also stated that A-M- was working five days a week and had recently returned to school as a part-time student. Further, the assessment indicated that the Applicant and A-M- both work, though the Applicant made more money, and stated that the Applicant and A-M- indicated that they would not be able to afford their expenses without the Applicant's income. The

[3] As noted in the Director's decision, the sessions with C-E- did not commence until shortly after a request for evidence was issued notifying the Applicant that a waiver application was required.

assessment additionally discussed both how A-M- would be affected by the Applicant's removal from the United States and how she would be affected should she choose to relocate to Nigeria with him.

In the Applicant's interview with C-E-, he claimed that either scenario of separation or relocation would be highly traumatic, and that he could see that A-M- was experiencing stress. The Applicant claimed that A-M- would not have support from her immediate family if he were to be separated from her, while noting that A-M- had good communication with her siblings but did not discuss her relationship with her two adult children. The Applicant noted that both he and A-M- worked five days a week, but that he was the main provider for the household. Regarding relocation, he stated that A-M- would be heartbroken to be separated from her siblings and older children, and that J-M- would have to leave his school and friends. The Applicant also made a statement that "many women in Nigeria are homeless, even ones with children, and they have to sleep on the streets" and that he fears that A-M- and J-M- would meet a similar fate, but did not explain why, if they would be relocating to live with him, this scenario would apply to them.

Finally, C-E- noted that their recommendations for A-M- would be for the waiver application to be granted, because this would result in A-M-'s symptoms "dissipating immediately" because her stress is only related to the Applicant's immigration situation. C-E- recommended that A-M- continue to receive psychotherapy and follow up with her physician to address her physical symptoms.

In the letters provided in support of the waiver application, they each discuss a general hardship that the Applicant, A-M-, and J-M- would potentially face should they be separated or choose to relocate; however, they do not provide specific details regarding any extreme hardship that A-M- would face. The Applicant did not submit income information for A-M-, and only provided a single Internal Revenue Service (IRS) Form 1099-K, Payment Card and Third Party Network Transactions, regarding his cab business. Finally, while the Applicant submitted photographs of A-M- in the hospital, he did not provide any associated medical records regarding the incident. Ultimately, the Director denied the waiver request concluding that the remaining evidence was not sufficient to establish that the Applicant's removal from the United States would cause his spouse a hardship that is above and beyond the usual hardship involved in every removal case.

On appeal, the Applicant submits a brief, an updated psychological assessment conducted by C-E-, including a letter of clarification, an affidavit from A-M-, a statement from the Applicant's attorney, a "Statement of Truth" from F-A-E-, an attorney in Nigeria, and income information relating to the Applicant and his business. As an initial matter, the Director's decision noted a discrepancy in the dates regarding when the Applicant an A-M- first met and were married. The initial psychological assessment stated that they met in July 2010 at A-M-'s place of employment and became an official couple in August 2010; however, the Applicant's initial entry to the United States was not until September 2010. The Director further noted that in A-M-'s statement, she indicated that they met in November 2010. On appeal, A-M- clarifies in her affidavit that she and the Applicant met in July 2011 and married in [redacted] 2011, approximately one month after they met. She contends that she signed the affidavit, composed by their attorney, in her hospital bed without reviewing it fully. The statement from their attorney indicates that he acknowledges the error and is unsure how it was made. The clarification letter from C-E- only states that they corrected the dates on the updated psychological assessment but does not state that they erred in their recounting of the dates or explain how the incorrect dates were presented and became part of the assessment. However, while the Director

discussed the discrepancy in these dates, our review of the Director's decision does not indicate that any significant weight was given to this matter.

The Applicant also raises the Director's discussion of his previous waiver filing, which was denied in October 2013. The Director noted that the Applicant made similar statements in both waiver applications regarding the religious and ethnic crises in Nigeria, which the decision on the 2013 waiver application noted had not been supported with evidence. The decision stated that the Applicant again made these assertions but did not support them with any documentary evidence. The Director also noted that the 2013 filing did not state that A-M- was suffering from any physical or mental stress due to his immigration case or provide evidence to demonstrate how the Applicant's immigration process had impacted her. On appeal, the Applicant contends that this 2013 waiver application was prepared and submitted without the assistance of an attorney, and that simply because the Applicant did not submit evidence or make similar claims to those he is making now does not mean that their claims of extreme hardship are false. While we agree that circumstances change and that a period of approximately seven years had passed between the Applicant's waiver filings, we determine that the Director did not err in considering the entire record when making their decision.

In reference to the Applicant's claims of religious and ethnic strife in Nigeria, he cites to the updated psychological assessment in which C-E- states that A-M- "is aware of the epidemic of street crime in Nigeria. She says that it is common for people with ties to the United States to be targeted for crimes such as robbery, kidnapping, abduction, or even murder. This is because people with ties to the United States are thought to have easy access to large sums of money." However, these claims are made by A-M-, in discussion with her licensed clinical social worker, and do not represent documentary evidence of a situation in Nigeria. The Applicant notes that he further submitted a "Statement of Truth" from F-A-E-, an attorney in Nigeria which affirms that his son was murdered and discusses current conditions in Nigeria. While we take this statement into account, it appears to echo the same information as provided by A-M- to C-E- in the psychological assessment and does not support the statements with any documentary evidence of conditions in Nigeria.

The Applicant asserts that the Director erred in stating that the initial psychological assessment did not indicate when A-M-'s stated conditions began and if the conditions were being treated. He notes that the assessment stated that the conditions started when "initiating the immigration process on behalf" of the Applicant. The Applicant further states that the letter from C-E- indicates that she is not qualified to treat physical symptoms as she is a licensed clinical social worker. The brief cites to the "current treatment" and lists medications that A-M- claims to be taking, but the Applicant has not supplemented the record with any other medical records, specifically regarding A-M-'s hospitalization and inability to work, or regarding any of her treatment for any of the symptoms outlined in C-E-'s assessments. The only documentation the Applicant has submitted regarding A-M-'s health and treatment is derived from her telephonic sessions with C-E-.

Further, the Applicant contends that the Director's decision erred in stating that A-M- has two adult children who are able to assist in financially supporting A-M-. While he contends this is an error, we note that A-M- has not addressed this in any of her statements and submitted one affidavit from one of her adult children. A-M-'s statement on appeal indicates that one of her adult children is not working and the other "has her own family to take care of." We note that A-M- has not provided any income documentation regarding her employment, and while she contends that she will face extreme

financial hardship without the Applicant's income, we are unable to reach such a conclusion, as the only income documentation submitted in support of the waiver application relates to the Applicant and his business. The Applicant next claims that the Director did not consider J-M-, who is a minor child and the Applicant's stepson, and states that it should be "self-evident that removing a ten-year old boy from the only country and culture he has known . . . would have a profound negative impact on him." We disagree with the Applicant's claim that the Director did not consider any hardship that would be experienced by A-M- resulting from hardships to J-M-, as the Director acknowledged the statements in the record and concluded that there was no evidence submitted to support this claim, aside from the statements by A-M- and in the psychological assessment. Again, the Applicant has not submitted documentary evidence supporting his claim, rather he points to the statements by C-E- in the updated psychological assessment. The assessment addresses hardships that would be faced by children who grow up without their father, and we acknowledge these statements. However, we determine that the hardships that would be faced by A-M- as a result of this do not rise to the level of extreme hardship.

In review of the updated psychological assessment, C-E- contends that A-M-'s symptoms have worsened and that she has developed nervous habits. The Applicant cites to *Figueroa v. Mukasey*, 543 F.3d 487, 496-98 (9th Cir. 2008), which concluded that future medical hardship to United States citizens if a respondent is deported and not simply current medical conditions is the proper standard of review. While we have taken the updated psychological assessment into consideration, we again conclude that the assessment has not been supplemented by other medical documentation regarding the treatment of A-M-'s conditions and symptoms, or her prior hospitalization. The assessment on its own is insufficient for us to conclude that she would experience extreme hardship either upon separation or relocation.

The Director's decision correctly reviewed the entirety of the evidence submitted and determined that the Applicant had not submitted sufficient evidence to determine that A-M- would experience extreme hardship, either on their own, or in the aggregate. In conclusion, although we acknowledge that the Applicant and his spouse will experience difficulties if separated, the totality of the evidence in the record remains insufficient to show that his spouse's emotional, financial, and medical 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. The Applicant must establish that denial of the waiver application will result in extreme hardship to a qualifying relative or relatives upon both separation and relocation. As he has not demonstrated such hardship in the event of separation or relocation, we cannot conclude that the requisite extreme hardship would result from denial of his waiver application.

ORDER: The appeal is dismissed.