U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27395676

Date: Sept. 22, 2023

Appeal of Newark, New Jersey Field Office Decision

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

The Applicant, a citizen of India, 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), for committing fraud when obtaining a nonimmigrant visa. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Newark, New Jersey Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the record did not establish that refusal of admission would result in extreme hardship to the Applicant's only qualifying relative, his U.S. citizen spouse. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis, which, if adverse, shall be certified to us for review.

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). USCIS may waive 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 they merit a favorable exercise of discretion. 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 (providing guidance on the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both 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 India 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.

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).

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

Finally, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality." Matter of Chawathe, 25 I&N Dec. at 376. That decision explains that, pursuant to the preponderance of the evidence standard, we "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." Id.

II. ANALYSIS

The Applicant does not contest the finding of inadmissibility for misrepresentation of material facts, which is established in the record. The relevant issue on appeal is whether the Applicant has established extreme hardship to his spouse, as required to qualify for a waiver of inadmissibility under section 212(i) of the Act and, if so, whether he merits the waiver as a matter of discretion.

In support of his waiver request, the Applicant submitted statements of the Applicant and his wife, a psychological evaluation of the Applicant's spouse, financial records (taxes and W-2's from 2019 and evidence of multiple loan obligations), letters from three adult children, and country conditions evidence pertaining to India. The Director stated that hardship to the Applicant was "not a permissible consideration" and that hardship to the couple's three children "will not be considered." The Director noted a letter from a cardiologist "indicating [the Applicant] had valve replacement surgery and a move to India could be detrimental to [the Applicant's] health." The Director stated that the Applicant's wife had a "heart procedure in the United States and she requires follow up appointments" and characterized the spouses health issues as relating to blood pressure and her heart. The Director noted a May 2012 catheterization report from a hospital indicating that the Applicant's spouse suffered a heart attack. The Director denied the waiver and did not reach the discretionary analysis, finding that the Applicant did not meet his burden of establishing extreme hardship to his spouse upon separation and relocation.

On appeal, the Applicant submitted a brief and provided updated evidence on country conditions in India. The Applicant asserts the following errors:

- The Director erroneously stated, "Hardship that the applicant experiences upon deportation is irrelevant to a waiver proceeding." It was error to ignore the impact of hardship on the Applicant and the couple's children insofar as it impacts the qualifying relative.
- The Director failed to consider all evidence presented by the Applicant, such as not considering or analyzing evidence pertaining to psychological or physical health of the Applicant's spouse.
- The Director did not consider the economic and financial evidence submitted.
- The Director failed to aggregate hardship.

Hardship to the Applicant or others can be considered insofar as it results in hardship to a qualifying relative. Matter of Gonzalez Recinas, 23 I&N Dec. 467, 471 (BIA 2002). See 9 USCIS Policy Manual, Section D, Effect of Hardship Experienced by a Person who is not a Qualifying Relative, https://www.uscis.gov/policy-manual/volume-9-part-b-chapter-4#S-D. Here, the Applicant has serious heart problems, as documented by evidence of heart procedures such as multiple stents inserted in his heart, together with evidence that the medical system in India is inferior to the United States. A psychologist evaluation of the Applicant's spouse states that the wife's psychological distress will be exacerbated by worrying about her husband's health and safety if he is removed. The psychologist also stated that "[the Applicant's spouse] is the kind of parent who cares deeply about her children's wellbeing and seeing them grow up without a father will cause her terrible pain."

Both the Applicant and his spouse have serious chronic heart problems. The Director's decision conflated the records to some extent and mischaracterized the Applicant's spouse's medical history. For example, the Director said he considered a "letter from [a cardiologist] indicating [the Applicant] had valve replacement surgery and a move to India could be detrimental to [the Applicant's] health." In fact, the letter relates to the Applicant's spouse, not the Applicant. Not only does the letter state that the Applicant's spouse had valve replacement surgery, but also that she has a "history of Coronary Artery disease, Atrial-Fibrillation, Stent, and valve replacement. She is on multiple cardiac medications and requires close monitoring, and if she leaves the country, it will be detrimental to her health given multiple cardiac conditions." The letter also states the cardiologist's observations that

the spouse has been "emotionally quite disturbed" and that she is "dependent on her husband for emotional support, and extra stress of separation from husband could be dangerous for her health."

The Director noted a "catherization (sic) report from [redacted] University Hospital from May 2012, indicating that [the Applicant's] spouse suffered a heart attack." The report also corroborates the spouse's heart-related medical history and notes that the heart attack occurred subsequent to the valve replacement surgery.

Regarding financial hardship, the Director noted submission of the Applicant's 2019 tax return and W-2's, but not his spouse's W-2's. The Director stated the Applicant's wife "failed to submit evidence of financial hardship other than her affidavit..." However, the record reflects that the spouse had three 2019 W-2's in the record, for income of $4505.00, $3353.75, and $6457.24, a total income of $14,315.99. We take administrative notice that the United States Department of Health and Human Services (HHS) Poverty Guidelines for a household of one is $14,450, Health and Human Services Poverty Guidelines for 2023, https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines.[1] USCIS uses 125% of the HHS Poverty Guidelines to determine if a foreign national will likely become a public charge, see Form I-864P, 2023 HHS Poverty Guidelines for Affidavit of Support, https://www.uscis.gov/i-864p.[2] The Applicant's spouse's statement indicates that she can no longer work due to her health. During the COVID crisis, one adult child supported the couple, but this child's statement indicates supporting his parents was only feasible short-term due to his own family expenses.

III. CONCLUSION

Because the Director did not consider all the hardship in the record, we will return the matter to the Director to consider the totality of evidence of extreme hardship in the first instance and to redetermine whether the Applicant has established eligibility for a waiver of inadmissibility and warrants the waiver in the exercise of discretion.[3]

ORDER: The decision of the Director of the Newark, New Jersey Field Office, is withdrawn. The matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

[1] See Matter of R-R, 20 I&N Dec. 547, 551 (BIA 1992) ("It is well established that administrative agencies and the court may take judicial (or administrative) notice of commonly known facts") (citation omitted).

[2] In 2019, the poverty level for a household of one was $12,490. At 14,315.99, the Applicant's spouse's income was below 125% of the poverty guideline for a household of one.

[3] We have the authority to withdraw a decision and remand the case for further action, with an order that it be certified back to us if the new decision is adverse to the affected party. USCIS Policy Memorandum PM-602-0087, Certification of Decisions to the Administrative Appeals Office (AAO) 4 (July 2, 2013), https://www.uscis.gov/sites/default/files/document/memos/Certification%20of%20Decisions%20.pdf (visited August 3, 2023), Adjudicator's Field Manual 3.5(c), 10.18(a)(3). This order is not meant to compel approval of the remanded case but is designed to preserve the affected party's ability to seek appellate review without payment of a second appeal fee. Id.