U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19946593

Date: JAN. 31, 2022

Appeal of Los Angeles County, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), for unlawful presence.

The Director of the Los Angeles County, California Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's qualifying relative, her lawful permanent resident spouse, would experience extreme hardship if she were denied the waiver. The matter is now before us on appeal. On appeal, the Applicant contends that the Director made numerous errors and incorrect assumptions in analyzing the hardship factors in her case and that she has shown her spouse would experience extreme hardship when those factors are considered in the aggregate.

The Administrative Appeals Office reviews 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

A noncitizen who was unlawfully present in the United States for a period of one year or more, and again seeks admission within ten years of departure or removal, is inadmissible. Section 212(a)(9)(B)(i)(II) of the Act. A noncitizen is deemed to be unlawfully present in the United States if present in the United States after the expiration of the period of authorized stay or if present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act. This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent. Section 212(a)(9)(B)(v) 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 these proceedings, it is the applicant's burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe,* 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant was determined to be inadmissible for unlawful presence for entering the United States on a B-2 visitor visa on December 28, 1996, departing on June 25, 2003 (after overstaying her period of authorized admission), and then seeking readmission as a nonimmigrant visitor in August 2003. She does not contest that she is inadmissible for unlawful presence and seeks a waiver of this ground of inadmissibility.[1] The issue on appeal is whether the Applicant has demonstrated that her lawful permanent resident spouse would experience extreme hardship upon denial of the waiver application, as required by section 212(a)(9)(B)(v) of the Act.

An applicant may show extreme hardship to a qualifying relative 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/policy-manual. Demonstrating extreme hardship under both scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. 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 that they would remain in the United States, if the applicant is denied admission.

In the present case, the record contains a declaration from the Applicant's spouse in which he discusses the hardships that he would face in the event of both separation from the Applicant and relocation with her to Mexico; he does not state a clear intent to either remain in the United States or to relocate. The Applicant must therefore establish that if she must depart the United States, her spouse will experience extreme hardship if he remains in the United States and if he relocates to Mexico.

Documentation submitted with the waiver application includes but is not limited to: statements from the Applicant and her spouse; documentation of the family's income and monthly expenses (including pay stubs, income tax returns, a monthly budget and copies of bills); mental health assessments for the Applicant's spouse; medical records for the spouse and the couple's youngest child; academic and vocational documentation for the Applicant's spouse and children; letters from friends and family who attest to the Applicant's good character and her close bond with her spouse and children; family photographs; and government reports and articles regarding country conditions in Mexico.

[1] The Director stated in the decision that the Applicant is inadmissible on the grounds that she accrued "more than 180 days" of unlawful presence in the United States, a determination that would bar her admission for a three-year period under Section 212(a)(9)(B)(i)(I) of the Act. However, the record reflects that the Applicant accrued approximately six years of unlawful presence between the expiration of her B-2 nonimmigrant status in May 1997 and her departure from the United States in June 2003. As such, she is inadmissible for a period of ten years under 212(a)(9)(B)(i)(II) of the Act.

The record reflects that the Applicant and her spouse were married in Mexico in 1993 and have been residing together in the United States since 1996. They have four sons (currently ages 27, 24, 20 and 7) and indicated that all four of their children resided with them at the time the waiver application was filed. The Applicant's spouse has additional family in the United States, including his parents, his four siblings, and their families, while the Applicant states that her parents still reside in Mexico. The Applicant contends that her spouse would suffer financial, emotional, psychological, and physical hardship upon separation and relocation. Therefore, we will first consider evidence related to the difficulties the Applicant's spouse would experience if he were to remain in the United States separated from her.

With respect to financial hardship, the Applicant emphasizes that her relocation to Mexico would result in additional financial obligations for her spouse that he would not be able to meet based on his current income. The record reflects that the spouse is employed as a full-time RV mechanic and that the Applicant does not work, except for occasional babysitting. The couple indicate in their statements that they always been committed to ensuring that they can afford to have the Applicant stay at home to care for their children and their household. They indicate that they also receive rental income from leasing half of the duplex that they own, and that their eldest son contributes to paying some family expenses. The Applicant's spouse provided a statement detailing the family's income and expenses in support of his claim that he could not cover the additional costs of maintaining a separate household for the Applicant in Mexico and a full-time nanny or day-care for their youngest son. The record also contains supporting evidence such as copies of paystubs, tax returns, and monthly bills. The Applicant and her spouse do address whether some of the current monthly expenses could be adjusted to account for additional expenses that may result from separation.

While we acknowledge that the family does not currently need to pay for childcare and that this may be an additional expense associated with separation, the record does not support the Applicant's claim that her spouse would need to undertake the expense of a full-time nanny or daycare for their school-aged son. The Applicant emphasizes that as a stay-at-home parent, she is always readily available to take care of her son without the need to rely on others. The Director noted in her decision that there are three adult children in the household who may be able to assist with the younger child's before and after-school care. On appeal, the Applicant emphasizes that her older children have school, jobs and social lives, and no legal responsibility to care for their youngest brother, but these facts do not support a conclusion that they will not or cannot assist with these responsibilities. The statements in the record also establish that the Applicant's spouse has a large, close-knit family living in the same [redacted] community, including his parents, siblings, and adult nieces and nephews. The Applicant's spouse may not be able to rely wholly on family and friends for childcare and may incur some additional expenses, but the record does not reflect that he would be obligated to undertake the more onerous financial obligation of full-time care for a child who is in elementary school.

Further, although the Applicant's spouse indicates that he will need to provide full financial support for the Applicant if she relocates, the record does not contain evidence of the Applicant's expected cost of living in Mexico, her employment prospects there, or the possibility that her parents would be able to assist her with housing and other support upon her relocation. The Applicant indicates that her parents themselves require financial assistance, but the record does not contain evidence that the Applicant and her spouse or other family members have been supporting them. Finally, the record does not contain a complete picture of the family's finances, such as evidence of any savings or other

assets that may be available as an additional resource if the Applicant were to require financial support in Mexico.

Overall, the evidence establishes that the Applicant's relocation would likely result in some additional expenses that may strain her spouse's finances, and these financial burdens will be considered in weighing the potential hardship of separation in the aggregate. Nevertheless, some degree of economic detriment is a common consequence of separation. The Applicant's spouse also indicates that he relies on her for physical support with household responsibilities other than childcare, such as cooking, shopping, and transporting children to appointments, and suggests he may need to hire outside help, notwithstanding the presence of other adults in the household. However, the record does not contain sufficient evidence to support the Applicant's assertions that her relocation would threaten her spouse's ability to cover the costs of housing, childcare, transportation, food, healthcare, and other essential expenses, or that the added physical burden of taking on additional household responsibilities would impose significant stress that would impact his ability to ensure that their minor child has a stable home environment.

We have also considered the Applicant's claim that her spouse requires her physical presence in the United States for medical reasons. The Applicant's spouse indicates that he has been prescribed a medication for lower back pain, that his physician has also referred him to a chiropractor, and that his condition has responded well to these treatments. He emphasizes that the Applicant also helps him manage the pain by giving him massages as needed. The Applicant's spouse expresses his worry that because the condition is chronic and recurring, the pain will worsen over time and that he will eventually require surgery if he does not continue take care of his back. However, while the record includes evidence that he has been evaluated and treated for back pain, it does not establish that the condition is one that makes him reliant on his wife's physical support. The spouse himself indicates that he can manage the condition with medication and chiropractic treatments when the pain recurs. Further, there is no documentation from a treating physician addressing his prognosis, the seriousness of the condition and its impact on daily activities, the need for regular massage or other home treatments, or the eventual need for surgery.

The Applicant has also submitted evidence in support of her claim that her spouse will suffer adverse psychological and emotional effects if they are separated. The evidence reflects that her spouse was evaluated by two licensed clinical social workers (LCSW) in his health insurance network in October 2019 after receiving a referral from his primary care provider, and by a licensed marriage and family therapist. One LCSW reported that the Applicant's spouse had symptoms of acute stress because of the Applicant's immigration issues and that he has treated the resulting insomnia and sleep disturbances with melatonin. The LCSW also reported that he reported mild symptoms of depression, but that further treatment in the provider's Depression Care Management program was not indicated. The other LCSW reported that "patient reports he was experiencing some stress, but is feeling better now and coping well," and noted that the medication prescribed by his medical provider "is helping him feel better."

The report from the licensed marriage and family therapist, who also evaluated the Applicant's spouse in the fall of 2019, states that his symptoms include fear, worry, anxiety, depression and lack of sleep stemming from the Applicant's immigration status and indicates that the spouse feels that these symptoms interfere with his ability to work and function independently. He indicates that the

Applicant's spouse's symptoms are consistent with post-traumatic stress disorder, generalized anxiety disorder, and mild depressive disorder, but also states that the spouse is "in the process of seeking more professional mental health services to determine if he is suffering from any possible psychiatric conditions and determining if further ongoing mental health services are required." The therapist indicates that his impression is that the Applicant's spouse "is on the verge of suffering a major depressive disorder" and that the emotional and financial strain of separation from the applicant would be "catastrophic."

While all three evaluations confirm that the Applicant's spouse has experienced increased emotional and psychological stress and is worried about a potential separation from the Applicant, the evidence, when considered together, does not establish whether or to what extent the strain of separation would adversely impact his ability to work and to take care of himself and his family. As noted, one of the professionals who evaluated the spouse indicates that he is coping well and responding to his current treatment, and the record reflects that he has health insurance and is willing and able to seek out continued treatment including medications and therapy or counseling if indicated in the future. The two LCSW reports do not specify that the Applicant's spouse is experiencing symptoms that have already impacted his functioning at home or at work, such as his ability to meet the demands of his job or parenting.

The affidavits from the Applicant, his spouse, their adult children, other family members and close friends indicate that they have a supportive and loving marriage and have a strong desire to raise their youngest child together and to give him the benefit of the same close family environment that his older siblings enjoyed. On appeal, the Applicant asserts that the Director did not adequately consider how difficult it would be for her spouse to raise their young son without her or acknowledge the likelihood that their son would experience adverse psychological and development consequences if separated from his mother. The Applicant claims that her spouse will suffer psychologically because their "youngest child will be ruined" if faced with such separation, and that this suffering will further impact her spouse's ability to provide a healthy and nurturing home environment. While the assessment from the marriage and family therapist generally discusses the possible impacts of family separation on children, there is no evidence that the Applicant's youngest son has been evaluated or that he is particularly vulnerable to experiencing serious psychological and developmental consequences. As noted, the record indicates that the Applicant's spouse has a large family and that his own parents and siblings have a close bond with his children and are involved in their lives.

We acknowledge the stress and anxiety the Applicant's spouse is experiencing because of the Applicant's immigration status, the prospect of separation from her, the potential strain in the family's financial circumstances, relationships and daily routines, and the prospect of the children, particularly the youngest child, not being able to maintain their current home environment and close relationship with their mother. The Applicant also submitted country condition reports for [redacted] and the state of [redacted] noting that violent and non-violent crime has led the U.S. Department of State to warn Americans to exercise caution when visiting or to reconsider travel to these locations. The Applicant and her spouse indicate that he will worry for her safety if she moves back to Mexico and note that the Applicant's brother was kidnapped for ransom in a different part of Mexico in 2019. They do not indicate, however, that they would not travel to Mexico to visit the Applicant if she returns to Mexico and the family remains in the United States.

Overall, the record does not demonstrate that the emotional or psychological impact on the Applicant's spouse is unusually significant relative to that commonly experienced by relatives of inadmissible family members who endure the emotional burden of separation from a loved one. As noted, the Applicant's spouse will continue to have access to medical and mental health treatment if he remains in the United States and the record indicates that he has responded well to previous treatment. Further, the record demonstrates that the Applicant's spouse has a very close relationship with his parents, siblings, adult children, and other family members and otherwise has a strong support network in his immediate community in the United States.

We are sympathetic to the family's circumstances, but even considering all of the evidence in its totality, the record remains insufficient to show that the aggregated financial, physical, psychological and emotional hardships of separation would be unusual or atypical to the extent that they rise to the level of extreme hardship.

As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to her spouse both upon separation and relocation. As the Applicant has not established extreme hardship to her spouse in the event of separation, we cannot conclude she has met this requirement, and we will not address whether her spouse would experience extreme hardship upon relocation to Mexico.[2] In addition, because the Applicant has not demonstrated extreme hardship to her qualifying relative if she is denied admission, we need not consider whether she merits a waiver in the exercise of discretion. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("agencies are not required to make findings on issues the decision of which is necessary to the results they reach."); *see also Matter of L-A-C-*, 16 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where a petitioner or applicant is otherwise ineligible).