U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22609849

Date: OCT. 5, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa 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. 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. The Nebraska Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility. The Director concluded the Applicant did not establish extreme hardship to his U.S. citizen spouse, his only qualifying relative.

On appeal, the Applicant submits a brief and additional evidence, asserting their eligibility. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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

A foreign national who has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i)(II) of the Act. To establish eligibility for a waiver of unlawful presence under section 212(a)(9)(B)(v) of the Act an alien must show, as a preliminary matter that refusal of admission would result in extreme hardship to the alien's U.S. citizen or lawful permanent resident spouse or parent.

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).

Only after demonstrating the requisite extreme hardship to their qualifying relative may a foreign national address why their waiver application warrants a favorable exercise of discretion. Section 212(a)(9)(B)(v) 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).

II. ANALYSIS

A. Immigration History

The Applicant entered the United States in 2010 without being inspected, admitted, or paroled and he began accruing unlawful presence. After a series of events, the Applicant was granted voluntary departure in 2019 and departed the United States later that same year. Subsequently, the Applicant sought admission to the United States by filing for an immigrant visa through the U.S. Department of State. The consular officer refused his immigrant visa, finding the Applicant inadmissible under section 212(a)(9)(B)(i)(II) for being unlawfully present in the United States for one year or more, and who again sought admission within 10 years of the date of his departure or removal from the country.

B. Extreme Hardship

The Director considered the Applicant's claims relating to financial hardship and medical issues his spouse (N-M-) would experience if he were refused admission to the United States as an LPR.[1] The financial issues the Director discussed included her difficulty in meeting financial obligations to include a foreclosure on her home. In support of these claims, the Applicant provided N-M-'s pay stubs, three recent years of tax return forms, and bank, mortgage, and credit card statements among other material. The Director ruled the Applicant provided insufficient evidence to support the claims regarding N-M-'s financial situation. Part of that analysis included a lack of evidence relating to how N-M- has been unable to meet her financial obligations or the extent to which his mother-in-law contributes to N-M-'s finances, in part to show the mother-in-law is attempting to prevent N-M- from losing her home.

The medical issues the Director considered were N-M-'s experiences with chronic back pain, dysphagia, migraines, joint pain, and a vitamin deficiency. The medical material in the record consists of N-M-'s Disclosure of Patient Medical Information listing her maladies the Director discussed. Although the medical documents reflected the medications N-M- was prescribed, the Director concluded the evidence did not establish how those issues would cause N-M- to experience hardship that rises to the level of extreme hardship. Finally, the Director noted that although N-M-'s statement

[1] We use initials to protect involved parties' identities.

indicates she feels alone and depressed, they did not provide documentary evidence to support the claims of emotional or psychological hardship she experiences.

On appeal the Applicant claims the Director erred by not considering the totality of the circumstances to determine the extreme hardship, as well as failing to assess the aggregate hardship N-M- would suffer in the event the waiver application was not approved. Additionally, the Applicant states the Director "superficially considered only the financial hardships and the related medical issues of the qualifying relative."

Relating to the finances issue, the Applicant takes issue with the Director's statement that he did not offer evidence to demonstrate foreclosure of her home is impending. The Applicant correctly notes case law does not require a showing that they are defaulting on payments in order to establish extreme hardship. While we understand how the Applicant could have surmised from the Director's decision that defaulting on mortgage payments is necessary, that stated standard does not appear to be the Director's point or position. Instead, the Director acknowledged their claims about the mortgage, offered their assessment of N-M-'s current financial situation, and noted the home was not yet in foreclosure. Although it appears the Director would have considered home foreclosure to be one additional factor, they did not mandate that situation to find in the Applicant's favor.

Turning to other financial factors, the Applicant asserts error in with the Director's analysis pertaining to the funds in their bank account and her ability to meet her obligations. The Director specifically stated:

> The evidence you submitted does not establish that any financial hardship your wife experiences rises to the level of extreme hardship. The most recent bank account summary shows a balance of $4382.62 and the credit cards [*sic*] bills and mortgage statement do not establish that she has had difficulty in making payments. The evidence is also insufficient in establishing a complete clear picture of you and your wife's financial situation.

The Applicant notes that if the Director tallied N-M-'s obligations for the month, she barely had a sufficient bank balance to cover those costs and she has no surplus in which to fall back on. Were N-M- unable to work for more than a few weeks, her financial situation would quickly deteriorate. The Applicant couples those factors with the financial assistance N-M-'s mother has been providing to her daughter, but the Applicant's mother-in-law is nearing retirement and will not have sufficient income to support her daughter in the same manner. Within the appeal brief, the Applicant states:

> Predictably, if her mother is unable to provide substantial support to [N-M-] for the next 10 years, it will become increasingly difficult, if not impossible for [N-M-] to continue to make her monthly payments, without a drastic change in her financial life. Which would include, foreclosure of her home and asset sales. It is clear that she cannot continue to rely upon her mother as a stable financial support.

We acknowledge such possible changes in N-M-'s financial situation, but we do not agree with the Applicant that this economic scenario demonstrates she would experience extreme hardship. Moreover, we question the validity of some of the Applicant's claims on appeal relating to the

assistance his mother-in-law allegedly provides to N-M-. Reviewing N-M-'s statement submitted to the Director in April 2021, N-M- stated: "Although she works as a housekeeper, I provide her much of her financial support. She lives in my house and I support most of her basic needs such as housing, utilities, and food." Here, we note conflicting but pertinent claims relating to N-M-'s financial situation. It is unclear how N-M- can be both the person whose financial constraints require her mother to aid in paying N-M-'s monthly obligations, while at the same time N-M- provides her mother with "much of her financial support . . . . [and] most of her basic needs such as housing, utilities, and food."

This incongruent information requires the Applicant to demonstrate which set of facts are correct, which must be accomplished through the submission of relevant, independent, and objective evidence revealing which information is true. *Matter of Ho*, 19 I&N Dec. 582, 591–92 (BIA 1988). The Applicant has not met this burden here. Furthermore, in N-M-'s statement dated in January 2022, she states, "I own a home with my mother . . . ." We observe that if N-M-'s mother jointly owns her home, this has the potential to further impact her claims to the extent that her mother aids her financially and her statement that her mother "lives in *my* house." (Emphasis added.) While not absolutely detrimental to the Applicant's case, this incongruent information tends to erode his eligibility claims regarding N-M-'s financial struggles.

As it relates to N-M-'s medical concerns, the Director acknowledged them as chronic back pain, dysphagia, migraines, joint pain, and a vitamin deficiency. On appeal, the Applicant states her medical conditions have affected her ability to work, but she works through the pain so she can pay her bills. The appeal brief states the only real remedy is for N-M- to take time off from work and to rest, and the only way she can achieve that is if the Applicant is with her in the United States to help around the house, to run errands, and to maintain their expenses when her conditions flare up.

The appeal brief does not indicate what evidence adequately supports the Applicant's claims relating to N-M-'s medical conditions. Before the Director, the Applicant provided her medical records essentially reflecting the Director's findings, but lacking is detailed medical information, such as a letter from a treating physician or other medical professional discussing N-M-'s diagnosis, prognosis, treatment, and any assistance she may require. As a result, the Applicant has not supported his claims with sufficiently probative evidence demonstrating the level of hardship N-M- may experience relating to her medical conditions.

Other factors the Applicant states the Director failed to consider are that her widowed LPR mother resides with her and her mother is on the cusp of retiring, she has no ties in the Applicant's home country other than her spouse in the event N-M- relocates to India, she is a U.S. citizen and she has been a long-time resident of the country, N-M-'s occupation as a health care worker is a positive benefit to the country, and there are no other possible means for the Applicant to attain LPR status.

The Applicant further states the Director did not provide any specific reasons why N-M-'s health conditions would not be problematic for her to support herself and to be independent. And the Applicant notes the Director incorrectly stated N-M- would not relocate to India and therefore failed to consider that aspect as a central claim. Regarding N-M-'s relocation to India, the appeal brief provides that she would have to abandon her career, her financial stability, her medical care, and she would be forced to sell her house and abandoned her widowed mother in order to make the transition.

The appeal brief places significant focus on the claim that N-M-'s mother is partially dependent upon her financially.

First, we reiterate that due to inconsistencies in the record, the Applicant has not established the extent to which N-M-'s mother is dependent upon her. Additionally, the applicant cites to *Matter of Louie*, 10 I&N Dec. 223, 225 (BIA 1963) to support the position that N-M-'s care for her mother should also be a significant factor in USCIS' determination on this waiver application. In the *Louie* case, the Board of Immigration Appeals found a foreign national established extreme hardship partly due to his care of his permanently partially paralyzed and permanently disabled father who resided in assisted living and to which the foreign national contributed funds to his care each month. The *Louie* case does not appear to support the Applicant's claims as the scenario in the present case is not corollary to the cited case: N-M-'s mother does not live in assisted living, N-M- does not contribute funds to such care, and her mother is not permanently disabled or paralyzed and therefore unable to care for herself.

Finally, we agree that the Director should have cumulatively considered the hardships the Applicant claimed in accordance with *Ige*, 20 I&N Dec. at 882. Still, while we acknowledge that error, on appeal the Applicant has not explained how the totality of the hardship N-M- might experience would change the Director's decision from an adverse outcome to a positive one. Instead, the appeal brief presents a conclusory statement that "[i]n the aggregate, [the factors we discussed above] compel a finding of extreme hardship . . . ." Here, the Applicant did not sufficiently support this assertion with evidence, nor did they adequately explain *how* they have demonstrated eligibility.

It is insufficient to allege eligibility through conclusory assertions that are not supported by sufficient evidence that proves the allegation, or persuasive arguments that adequately explain the asserted facts. *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Fano v. O'Neill*, 806 F.2d 1262, 1266 (5th Cir. 1987); *1756, Inc. v. Att'y Gen*, 745 F. Supp. 9, 17 (D.D.C. 1990). Simply stating something as fact does not make it so, nor does it satisfy a filing party's burden to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 371–72 (AAO 2010) (discussing assertions that are not supported by probative material will not meet a filing party's burden of proof).

Because the Applicant has not identified how this error on the Director's part impacted the outcome of this case, it appears to be of a harmless nature. Again, the Applicant has not demonstrated he was prejudiced by the Director's error and that is not enough to prevail in this appeal. *See Shinseki v. Sanders*, 556 U.S. 396, 409 (2009); *Molina-Martinez v. United States*, 578 U.S. 189, 203 (2016). Furthermore, despite the additional claims the Applicant advances on appeal and the fact that we are sympathetic to the family's circumstances, even considering the totality of this filing, we conclude the claimed financial and physical hardships to the Applicant's spouse upon separation from him—when considered in the aggregate—are those that are expected upon denial of a waiver application, and he has not demonstrated these hardships rise to the requisite level of extreme. *See Pilch*, 21 I&N Dec. at 630–31. Nor has the Applicant shown the difficulties N-M- would experience, were she to relocate to India with the Applicant, rise to the extreme hardship level.

As the Applicant has not demonstrated the requisite extreme hardship, no purpose would be served in determining whether they merit the waiver as a matter of discretion. Based on our determinations

above, the Applicant is inadmissible under section 212(a)(9)(B)(i)(II) and they have not demonstrated they warrant a waiver of that inadmissibility ground. As a result, the waiver application remains denied.

ORDER: The appeal is dismissed.