U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22574556

Date: OCT. 6, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act) for unlawful presence. 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. There is a waiver of these grounds of inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national. Section 212(a)(9)(B)(v) of the Act. If the foreign national demonstrates the existence of the required hardship, then they must also show that they merit a favorable exercise of discretion. *Id.*

The Director of the Nebraska Service Center denied the waiver, concluding that the Applicant did not establish that her U.S. citizen spouse would experience extreme hardship because of her continued inadmissibility.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). On appeal, the Applicant asserts that the Director erred in denying the application. Upon *de novo* review, we will remand the matter for the entry of a new decision consistent with our analysis below.

A. Unlawful Presence Inadmissibility

The Applicant, a dual citizen of Ethiopia and Sweden, and her United States citizen spouse married in Sweden in 2010. In July 2012 he filed an immediate relative immigrant petition (Form I-130) on her behalf, which was approved. In September 2012, the Applicant was admitted to the United States under the Visa Waiver program. The Applicant and her spouse have two United States citizen children, who are currently 8 and 9 years old. In April 2017, the Applicant departed the United States with the children to Sweden in order to apply for an immigrant visa with the United States Department of State (DOS). DOS refused to issue the visa, finding the Applicant to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more. The Applicant does not contest her inadmissibility in the waiver application and remains with her children in Sweden.

B. Extreme Hardship Waiver

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).

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case her U.S. citizen spouse. 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. 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. 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* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual.

The Applicant submitted evidence with the waiver application, including a statement from her spouse in which he attested that he cannot relocate to Sweden because he must continue to live and work in the United States in order to support his family. He also explained that he was born in Ethiopia but has lived in the United States since he sought asylum here in 2000. After gaining asylum in 2005 he was able to bring his three minor children from Ethiopia, who he raised to adulthood as a single father after they entered the United States. He indicates that he spent many years apart from these children as he sought permanent immigration status in the United States, and that his first marriage to his wife in Ethiopia failed due to his prolonged absence from his family, resulting in their divorce. He met and eventually married the Applicant after a transatlantic courtship. Later, he became a U.S. citizen. He highlighted that he has lived apart from the Applicant and his children since 2017 when they departed to Sweden, which has caused him emotional and psychological distress, adversely impacting his diagnosed anxiety, depression and post-traumatic stress disorder (PTSD) mental health conditions, which were ailments "sustained over a long period of time," according to the mental health evaluation provided in support of the application from his clinical psychologist.

The spouse also discussed his financial hardships upon separation from the Applicant, noting that he was the sole breadwinner in the family due to the Applicant's inability to work in Sweden and concurrently care for their two young children, which required him to support two residences – one in the United States for himself, and one in Sweden for the Applicant and his children – as well as provide for all of the other living expenses collectively required by the family. The Applicant submitted evidence of the spouse's income, and her family's living expenses in the United States and in Sweden.

The Director issued a request for evidence (RFE) asking for the submission of additional evidence to substantiate the spouse's hardships as initially outlined in the application. In response, the Applicant provided additional documents about the spouse's psychological and financial hardships. The Director evaluated the evidence provided in support of the waiver regarding the spouse's hardships and denied the application, concluding that the Applicant had not established extreme hardship to her spouse upon separation.

On appeal, the Applicant asserts that the Director erred in analyzing the hardship factors in her case and contends that she has shown that her spouse's hardships, when considered in the aggregate, are extreme hardships. In support of her appeal, she submits new evidence clarifying that her spouse may either relocate to Sweden to reside with her *or* may live apart from her in the United States should the waiver application remain denied. Specifically, the Applicant provides a new statement from her spouse in which he indicates:

> I left [the United States] for Sweden [in] February 2022. At that point I was still hoping for a positive decision on my wife's waiver case. Since the waiver has been denied my world has become completely untethered. I don't know what I am going to do. I am allowed to stay in Sweden for 90 days. I have taken unpaid leave from my job and I gave up my apartment in [the United States] because I could not afford to keep up two households. . . . I lived 5 years separated from my wife and children. I can't continue like that. I can't face going back to America by myself. It's too much.

The Applicant states in her appeal brief that her spouse's "[r]elocation to Sweden may not be possible," and that her appeal "is based on extreme hardship due to separation." She asserts that her spouse's "impulse to relocate to Sweden should be considered as more evidence of the extreme hardship he is suffering. If the hardship was bearable, he would not be considering such a radical move."

In contrast, the Applicant also indicates that her spouse "is now considering relocation to Sweden for the remainder of [her] 10-year bar."[1] She contends that her spouse would experience extreme hardship upon relocation, noting among other things, that he misses his adult children in the United States, has no ties to Sweden apart from herself, does not speak Swedish, and has poor employment prospects there. She provides new evidence to substantiate her spouse's hardships upon relocation, such as material about the employment challenges for immigrants in Sweden, and the financial support requirements for obtaining a residence permit for her spouse there – asserting that he may be unable to obtain a residency permit in Sweden for financial reasons.

We therefore conclude that the Applicant has provided inconsistent evidence on appeal regarding her spouse's intention to either relocate with her to Sweden or live apart from her in the United States. The Applicant must therefore establish that if she is denied admission, her qualifying relative would experience extreme hardship both upon separation and relocation.

[1] The Applicant departed the United States in April 2017, thus her 10-year inadmissibility bar tolls until April 2027. Section 212(a)(9)(B)(i)(II) of the Act.

On appeal, the Applicant presents other new evidence relating to her spouse's hardships upon separation and relocation, such as recent financial records, a letter from the spouse's employer confirming that he has taken extended unpaid leave from his job, statements from his three adult children who lived near him in the United States, and articles regarding prevalent mental health stigmas in the Ethiopian culture.

Additionally, the circumstances surrounding the spouse's hardships appear to have changed since the Director's denial of the application. For example, the new evidence in the record suggests that he is no longer residing in the United States and is not financially maintaining two households for his family. He has taken unpaid leave and is no longer earning the level of income documented in the record prior to the denial of the application. Other circumstances surrounding his emotional and psychological hardships also appear to have changed.

For the foregoing reasons, we will withdraw the Director's decision and remand the matter back to the Director to consider this evidence in the first instance within a new hardship analysis and, if necessary, a discretionary determination, making sure to include any extreme hardship finding as a significant positive discretionary factor.

The Director may request any additional evidence considered pertinent to the new determination and any other issues. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.