U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20720884

Date: AUG. 24, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, who has requested to adjust status in the United States to that of a lawful permanent resident, seeks a waiver of inadmissibility for having been convicted of a crime involving moral turpitude (CIMT) under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h). U.S. Citizenship and Immigration Services (USCIS) may grant this waiver as a matter of discretion if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Nebraska Service Center (Director) denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the evidence the Applicant provided was insufficient to establish extreme hardship to his qualifying relative. On appeal, the Applicant submits additional evidence and reasserts that his spouse and daughter would experience extreme hardship if he were refused admission.

In these proceedings the Applicant has the burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will remand the matter to the Director for further proceedings consistent with this decision.

I. LAW

A noncitizen convicted of (or who admits having committed, or who admits committing acts which constitute the essential elements of) a CIMT (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. Section 212(a)(2)(A)(i) of the Act. Individuals found inadmissible under section 212(a)(2)(A)(i) of the Act may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. This discretionary waiver is available if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act. If the applicant demonstrates the required extreme hardship to a qualifying relative(s), then they must also show that USCIS should favorably exercise its discretion to grant the waiver. Section 212(h)(1)(C) 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). While some degree of hardship to qualifying relatives is present in most cases, 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).

II. ANALYSIS

The Director determined that the Applicant was inadmissible under section 212(a)(2)(A)(i) of the Act because he was convicted of CIMTs, including a 2001 conviction for battery with serious bodily injury in violation of section 243(d) of the California Penal Code (CPC) and a 2001 conviction for grand theft in violation of section 487(a) of the CPC. The convictions resulted in 40 days in jail and three years of probation for the battery offense and 120 days in jail and three years of probation for the theft offense. The Applicant does not contest this determination, and it is supported by the record. The issue on appeal is whether the Director erred in concluding that the Applicant had not established eligibility for a waiver of inadmissibility under section 212(h) of the Act because he did not demonstrate extreme hardship to a qualifying relative if he was 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. Establishing 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 would remain in the United States, if the applicant is denied admission. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual. In this instance, the Director determined that the Applicant did not establish the requisite extreme hardship to his U.S. citizen spouse upon separation.

The record reflects that the Applicant was granted voluntary departure to Venezuela by an immigration judge in March 2011 and subsequently departed the United States. In [redacted] 2011, the Applicant and his spouse married in Venezuela. The Applicant currently resides in Colombia but is a citizen and native of Venezuela. His spouse resides in the United States with A-M-,[1] who the Applicant asserted is his 16-year-old U.S. citizen daughter. In support of his waiver request, the Applicant initially submitted hardship statements from his spouse and A-M-; a statement from the Applicant; copies of his spouse's medical records; copies of travel arrangements for his spouse and A-M- to Venezuela as well as his spouse's descriptions of the travel; copies of the Applicant's immigration court records; and copies of his criminal records. In response to a request for evidence (RFE) issued by the Director, the Applicant submitted additional statements from the Applicant and his spouse; copies of additional medical records from his spouse; copies of medical records of M-M-, who the Applicant's spouse asserted is her adult son and the Applicant's stepson; and photographs of the Applicant, his spouse,

[1] We use initials to protect the privacy of individuals.

M-M-, and A-M-. In her statement submitted in response to the Director's RFE, the Applicant's spouse indicated that M-M- had an accident that left him paralyzed from the chest down. She also described K-M-, who she asserted is her niece, as having Cerebral Palsy. Although the record does not include primary evidence of the relationship between his spouse and M-M- or K-M-, such as birth certificates, the Applicant's spouse provided probative testimony in her detailed statement and submitted medical records and photographs in support of her assertion that she would suffer extreme hardship if the Applicant is refused admission, because she is responsible for the care of M-M- and K-M- and requires the Applicant's support to do so.

In denying the waiver application, the Director acknowledged evidence that the Applicant's spouse was diagnosed with general depressive disorder and anxiety disorder but determined that the evidence did not detail how those diagnoses affect the spouse's daily living and result in extreme hardship to her. With respect to financial hardship, the Director acknowledged evidence of the financial difficulties the Applicant's spouse experienced in the past without the Applicant's assistance, including a period of homelessness, but underscored that the Applicant did not submit evidence of his spouse's income or expenses to establish that his spouse will suffer or suffers financial hardship as a result of separation from the Applicant. After considering the totality of the evidence, the Director denied the waiver application, concluding that the Applicant did not demonstrate his spouse would suffer hardship beyond the common consequences of separation or relocation. The Director further found that the Applicant did not provide evidence that A-M- is his daughter and therefore a qualifying relative, and consequently, did not consider the letters in the record from A-M-.[2] Accordingly, the Director determined that the Applicant did not satisfy the requisite extreme hardship to a qualifying relative. Lastly, the Director noted that the Applicant's conviction for battery is for a violent and dangerous offense requiring him to establish eligibility under the heightened discretionary standard at to 8 C.F.R. § 212.7(d) but did not further reach the issue as the Applicant had not otherwise established his statutory eligibility.

On appeal, the Applicant submits an updated letter from his spouse and his daughter. He also submits an expense chart that indicates his spouse's expenses compared to her income. The Applicant further proffers documentation that corroborates some of his spouse's expenses, including documents related to rent, wire transfers to the Applicant, auto insurance, and care for M-M-. He provides evidence demonstrating that his spouse is paid as an in-home supportive services provider to care for M-M-, who the Applicant's spouse asserts is her adult, disabled son (the Applicant's stepson), during the day. Finally, the Applicant submits photographs of that appear to be of M-M- and K-M-, depicting their physical and medical disabilities.

In her supplemental statement on appeal, the Applicant's spouse continues to contend that she is suffering financial, emotional, and physical hardship because she is taking care of M-M- and K-M-. The spouse further states that she is responsible for utility bills and car payments, and that she is also financially supporting A-M-. The Applicant's spouse also asserts that she sends him money regularly and she is responsible for paying for M-M-'s care, as well as his rent. Her statement further details the emotional, physical, and financial impact of having to care for M-M-, her 26-year-old son, who

[2] Given that we are remanding this matter to the Director, the Applicant may wish to supplement the record before the Director with additional evidence of his eligibility, including evidence that A-M- is his daughter and a qualifying relative for purposes of this waiver application under section 212(h) of the Act .

she states was paralyzed from the chest down after a gymnastics accident recently in August 2020 (after the filing of this waiver application). She describes paying for his overnight caretaker as well as paying for his rent and expenses that he can no longer pay for himself. The Applicant's spouse also details the care she provides M-M-, including washing him, dressing him, and feeding him. The spouse goes on to state that her niece, K-M-, was born with Cerebral Palsy, cannot speak, and has limited mobility. She asserts that she is also caring for K-M- during the afternoons, which is an additional strain on her. The Applicant's spouse contends the Applicant would be able to assist her in caring for M-M- if he was allowed to return to the United States. The new evidence regarding M-M- and K-M- and the Applicant's spouse's care of them is material to whether the spouse would suffer resulting extreme hardship upon separation if the Applicant were refused admission and unable to return to the U.S. Further, our review indicates that the Director failed to consider the initial evidence regarding M-M- and K-M- that was submitted, although it is directly material and relevant to the Applicant's claim of extreme hardship to his spouse upon separation.

Given this error and because the new evidence on appeal is relevant and material to the Director's determination that the Applicant did not establish the requisite extreme hardship to his qualifying relative, we will remand this matter to the Director to consider all of the evidence of extreme hardship consistent with the foregoing analysis and, if the Director finds that extreme hardship to one or more qualifying relatives has been established, to determine in the first instance whether the Applicant warrants a waiver of inadmissibility under section 212(h) of the Act in the exercise of discretion.

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