U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15243081

Date: FEB. 11, 2022

Appeal of Phoenix, Arizona 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(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

The Director of the Phoenix, Arizona Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant had not identified a qualifying relative. The Director then reopened the application on the Applicant's motion because the Applicant's U.S. citizen daughter is a qualifying relative for the purposes of a waiver under section 212(h) of the Act. The Director denied the waiver application for a second time, based on a determination that the record did not establish that the Applicant's qualifying relative would experience extreme hardship if the Applicant were denied the waiver. The Director also determined that the Applicant is not entitled to a favorable exercise of discretion because negative factors outweigh positive factors. The matter is now before us on appeal.

On appeal, the Applicant submits additional evidence and contends that her U.S. citizen daughter would experience extreme hardship if the waiver were denied. 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 remand the matter to the Director for the entry of a new decision.

I. LAW

Section 212(a)(2)(A) of the Act provides that any noncitizen convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. Noncitizens found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. Section 212(h)(1)(B) of the Act provides for a waiver if denial of admission would result in extreme hardship to the noncitizen's United States citizen or lawful permanent resident spouse, parent, son, or daughter.

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 does not dispute that she has been convicted of crimes of moral turpitude, primarily shoplifting in violation of Arizona Revised Statutes section 13-1805. The Applicant specifically acknowledges two such convictions in 2011 and 2015. The record also includes incomplete evidence regarding other arrests and convictions dating back to 1994, but the two acknowledged convictions are sufficient to establish inadmissibility.

The principal issue on appeal is whether the Applicant has demonstrated that her qualifying relative, her youngest daughter (a U.S. citizen), would experience extreme hardship upon denial of the waiver. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relatives remain in the United States separated from the applicant and 2) if the qualifying relatives relocate overseas with the applicant. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (providing, as guidance, the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both of 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 Applicant's daughter does not definitively say whether she intends to remain in the United States or relocate to Mexico if the Applicant's waiver application is denied. The Applicant must therefore establish that if she is denied admission, her qualifying relative would experience extreme hardship both upon separation and relocation.

At the time of the Director's initial denial decision, the Applicant had offered only general assertions about the emotional and financial hardship that her youngest daughter would suffer if the waiver were denied. The motion to reopen and reconsider largely hinged on the technical question of whether her daughter is a qualifying relative, and therefore it did not include a significant amount of new, substantive evidence related to hardship factors.

On appeal, however, the Applicant submits substantial, corroborated evidence indicating that the son of her U.S. citizen daughter has a severe behavioral disorder, which has created new demands on the daughter's time and finances. The Applicant and her daughter assert that the Applicant's continued involvement is important for the child's care, and that the Applicant's absence would therefore result

in extreme hardship to her daughter. This is a new issue, which apparently arose after the child began attending school – which, in turn, occurred after the initial filing date. Because this information appears to be material to the claim of extreme hardship, we will remand the matter to the Director for consideration of this new material.

At the same time, the Director must give careful attention to apparent discrepancies in the record. In their statements from late 2018 and early 2019, both the Applicant and her U.S. citizen daughter assert that they live together, along with the daughter's two young children, and that the Applicant is the family's only source of financial support. But a December 12, 2018 psychiatric evaluation of the Applicant's daughter, prepared within weeks of those statements, indicates that the Applicant's daughter "currently lives with both of her parents, her fiancé . . . , and their two children," and that "her fiancé and her mother are the principal breadwinners for the family." Neither the Applicant nor her daughter have mentioned the daughter's father and fiancé as household residents, or the fiancé's income as a source of financial support.

In this respect, it is significant that the daughter's fiancé executed a Form I-864, Affidavit of Support Under Section 213A of the INA, in August 2018, in support of the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status. On that affidavit of support, he claimed the same residential address as both the Applicant and her daughter.[1] This document, signed under penalty of perjury by the Applicant's daughter's fiancé, is consistent with the information in the psychological evaluation. If the daughter's fiancé lives in the same household and contributes his income, as the above evidence indicates, then this information is directly material to the daughter's situation with respect to finances and child care, and must be considered when discussing the daughter's emotional and financial support.

Given the above information, any further action in this matter is contingent on a complete and corroborated accounting of *everyone* who lives with the Applicant and her daughter, and *all* income brought to the household by anyone residing there, along with a full explanation for statements that appear to conflict with record evidence, as described above. Such information is relevant to a number of factors related to the Applicant's extreme hardship claim.

The above issues require clarification before any final decision is possible in this proceeding. The Applicant must establish by a preponderance of the evidence that denial of the waiver application would result in extreme hardship to a qualifying relative both upon separation and relocation. Section 212(a)(9)(B)(v) of the Act; *Chawathe*, 25 I&N Dec. at 375; *see also* 9 USCIS Policy Manual B.4(B), (providing, as guidance, the scenarios to consider in making extreme hardship determinations).

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

[1] The Affidavit of Support was prepared by an attorney at the same firm as the Applicant's present counsel of record.