U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18525184

Date: FEB. 22, 2022

Appeal of Spokane, Washington Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant 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 (the Act), 8 U.S.C. § 1182(h).

The Director of the Spokane, Washington Field Office denied the application, concluding that the Applicant was inadmissible under sections 212(a)(2)(A)(i)(I), (B) of the Act and that the record did not establish that his qualifying relatives would suffer extreme hardship if the Applicant were not granted the waiver.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon our *de novo* review, we will dismiss the appeal.

I. LAW

Section 212(a)(2)(A)(i)(I) 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 (CIMT) (other than a purely political offense), or an attempt or conspiracy to commit such a crime is inadmissible.

Section 212(a)(2)(B) of the Act provides that any noncitizen convicted of two or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were five years or more is inadmissible.

Individuals found inadmissible under sections 212(a)(2)(A)(i), (B) of the Act may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. A discretionary waiver is available if denial of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act.

With respect to the discretionary nature of a waiver, when a noncitizen has been convicted of a violent or dangerous crime, the regulations governing the exercise of discretion are set forth in 8 C.F.R. § 212.7(d), and generally preclude a favorable exercise of discretion except in extraordinary circumstances, which include situations in which the noncitizen has established "exceptional and extremely unusual hardship" if the benefit is denied, or situations in which overriding national security or foreign policy considerations exist. However, even if an applicant can demonstrate the existence of these extraordinary circumstances, depending on the gravity of the applicant's offense, consent to his or her admission as a matter of discretion may still be denied.

II. ANALYSIS

The Director found that the Applicant's two assault convictions render the Applicant inadmissible under sections 212(a)(2)(A)(i)(I), (B) of the Act. The Applicant does not contest this finding and we will not disturb the Director's determination. The issue on appeal is whether the Applicant has demonstrated his qualifying relatives would experience extreme hardship upon denial of the waiver under section 212(h)(1)(B) 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).

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 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/legal-resources/policy-memoranda. In the present case, the record is unclear whether the Applicant's spouse would remain in the United States or relocate to Honduras if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

On appeal, the Applicant contends that his spouse and child would experience extreme hardship if they were separated from the Applicant. The Applicant further contends that USCIS erred in not issuing a request for evidence before issuing a denial.

The Applicant submits a statement from his spouse; she states that she depends on her husband and that he pays for their home, food, rent, and medicine. On appeal the Applicant submits a letter from his spouse's physician, who states that the Applicant's spouse suffers from insulin-dependent diabetes and other, unspecified chronic conditions. The physician claims that his wife's medical stability would be significantly harmed if the Applicant were forced to leave the country.

The Applicant also submits a statement from his son; he explains his health issues he had as a child and expresses how helpful his father was then. The Applicant submits documentation detailing the treatment of his son's illness—the most recent document submitted is over ten years old. This documentation includes a letter from the son's physician from 2009, emphasizing the importance of the Applicant's father in his son's health.

In his own statement, the Applicant contends that his U.S. citizen daughter would also experience hardship for financial reasons. However, there is no statement from the Applicant's daughter in the record, nor are there corroborating financial records.

Although we are sympathetic to the family's circumstances, we conclude that if the Applicant's spouse remains in the United States without the Applicant, the record is insufficient to show that her hardship would rise beyond the common results of separation to the level of extreme hardship because the evidence lacks detail and specificity. Although the Applicant's spouse provides in a statement that she is financially dependent on the Applicant, there is no recent documentation to corroborate this. The most recent tax return was from 2016 and the record does not contain sufficient financial documentation to establish household income, expenses or assets. While USCIS considers the expertise of reputable medical professionals, the letter provided by the Applicant's wife is brief and conclusory. The record establishes that the Applicant's spouse has insulin-dependent diabetes, and the Applicant may support his wife, as attested by his wife's physician. However, the record, which includes statements from the Applicant, his wife, and his son, specifies only that the Applicant accompanies her to medical appointments, and monitors her health. The Applicant contends that the Applicant's wife would be unable to control her diet and miss her medical appointments without the Applicant's aid, but the Applicant does not explain why she could not control her own diet or go to her medical appointment or how often she has to go to medical appointments or why other family members or friends could not provide assistance. The evidence does not establish either medical or financial hardship sufficient to establish extreme hardship.

With respect to the Applicant's son, neither the statement he provided nor the accompanying documentation establish that the Applicant's son would experience extreme hardship if separated from the Applicant. While the Applicant contends that the Applicant occasionally offers financial assistance to the Applicant's son for some medical treatments, there is no corroborating financial documentation to this effect. The evidence of medical hardship the Applicant's son could experience upon separation from the Applicant is of little evidentiary weight, as it is from twelve years ago and the Applicant's son is significantly older now. Likewise, the Applicant has not provided sufficient evidence that his daughter would experience extreme hardship if separated from the Applicant.

As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to his spouse both upon separation and relocation to Honduras. As the Applicant has not established extreme hardship to his qualifying relatives in the event of separation, we cannot

conclude he has met this requirement. Because the Applicant has not demonstrated extreme hardship to a qualifying relative if she is denied admission, we need not consider whether he merits a waiver in the exercise of discretion; we note here, however, that the Applicant has been convicted of several counts of assault. At least one, in 2004, notes that the elements of that crime were intentionally striking or touching a person in a harmful or offensive manner. Given that the Applicant has not established extreme hardship to his qualifying relatives, we will not address whether the Applicant's crime was violent or dangerous as contemplated in section 212.7(d) of the Act, and whether he is subject to a heightened discretionary standard. The waiver application will remain denied.

ORDER: The appeal is dismissed.