U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21369684

Date: JUL. 5, 2022

Appeal of Oakland Park 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 (the Act), 8 U.S.C. § 1182(h).

The Director of the Oakland Park, Florida Field Office denied the application, noting that the Applicant was inadmissible under section 212(a)(2)(A)(i) of the Act, for a controlled substance violation. The Director then concluded that the Applicant had not established that her U.S. citizen spouse, the only qualifying relative, would suffer extreme if she is denied admission. On appeal, the Applicant contends that she will experience extreme hardship were she unable to reside in the United States with her spouse.

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). This office reviews the questions in this matter *de novo*. *See 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

Any individual convicted of, or who admits having committed, or who admits having committed acts which constitute the essential elements of, a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible. Section 212(a)(2)(A)(i)(II) of the Act. Individuals found inadmissible under section 212(a)(2)(A) of the Act for a controlled substance violation related to a single offense of simple possession of 30 grams or less of marijuana may seek a discretionary waiver of inadmissibility under section 212(h) of the Act.

This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or LPR spouse, parent, son, or daughter. Section (h) of the Act. Hardship to the applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

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).

II. ANALYSIS

The Applicant was found inadmissible under section 212(a)(2)(A)(i)(II) of the Act, for a controlled substance violation. Specifically, the record establishes that the Applicant was convicted in 2018 of Possession of Cannabis- 20 grams or less, in violation of Florida Statutes § 893.13(6)(b). The Applicant does not contest inadmissibility on appeal. The issue on appeal therefore is whether the Applicant has established extreme hardship to a qualifying relative. Upon consideration of the entire record, including the arguments made on appeal, we conclude that the Applicant has not established that her U.S. citizen spouse would experience extreme hardship upon relocation or separation.

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. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual. In the present case, the record does not contain a statement from the Applicant's spouse indicating whether he intends to remain in the United States or relocate to Haiti with the Applicant if the waiver application is denied. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

With the waiver application, the Applicant submitted a statement from her spouse. The spouse asserted that he could not bear losing his wife. He also maintained that he and the Applicant lost a child in December 2018 and they need each other for support and comfort and were the Applicant to relocate abroad, they would not be able to have a child together. The Applicant's spouse also maintained that his spouse has been diagnosed with medical conditions and he feared she would not be able to obtain effective treatment in Haiti. Finally, the Applicant's spouse stated that the Haitian economy is problematic and if his spouse were to relocate abroad, "it would make everything extremely difficult and make things more expensive."

The Director denied the waiver application, finding that the Applicant has not established extreme hardship to her spouse. The Director detailed that the Applicant's spouse's possible loss of the

Applicant's "love, companionship, as well as financial support" did not demonstrate hardship greater than that of anyone else whose spouse faces the possibility of deportation or removal.

On appeal, the Applicant submits a statement outlining the emotional, medical, and academic hardships she will experience if her waiver application is denied. She also references the problematic country conditions in Haiti and contends that it is unsafe for her to return there.

We adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments rescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

On appeal, the Applicant has not addressed the deficiencies raised by the Director with respect to extreme hardship to her U.S. citizen spouse. The only documentation submitted on appeal pertains to the hardships the Applicant contends she would experience were the waiver application denied. While we sympathize with the Applicant's stated hardships, the Applicant is not a qualifying relative for purposes of a waiver of inadmissibility under section 212(h) of the Act.

The Applicant must establish that denial of the waiver application would result in extreme hardship to a qualifying relative upon both separation and relocation. As the Applicant has not established extreme hardship to her qualifying relative under either scenario, we cannot conclude she has met this requirement. As such, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. Section 291 of the Act, 8 U.S.C. § 1361. Here, she has not met that burden.

ORDER: The appeal is dismissed.