U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21025909

Date: JUN. 17, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa and seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), for having been convicted of a crime involving moral turpitude, and under section 212(i) of the Act, 8 U.S.C. § 1182(i), for willful misrepresentation of a material fact. The Director of the Nebraska Service Center denied the Form I-601, Application to Waive Inadmissibility Grounds, concluding that although the Applicant met the waiver requirements under section 212(h)(1)(A) of the Act regarding her crime involving moral turpitude, she remains inadmissible for willful misrepresentation. The Director noted that the U.S. Department of State (DOS) found the Applicant inadmissible for willful misrepresentation and the record did not establish that her lawful permanent resident (LPR) spouse, the only qualifying relative under section 212(i) of the Act, would suffer extreme hardship if she is denied admission.

The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and asserts that she is not inadmissible for willful misrepresentation and the record establishes extreme hardship to her LPR spouse. We review the questions raised 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 dismiss the appeal.

I. LAW

Any foreign national who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act. There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or LPR spouse or parent of the foreign national. If the foreign national demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its discretion. Section 212(i) 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). In these proceedings, it is an applicant's burden to establish eligibility for the requested benefit. *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Except where a different standard is specified by law, an applicant must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant, a citizen of [redacted] is residing abroad and applying for an immigrant visa. A DOS consular officer determined that the Applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for committing a crime involving moral turpitude, specifically a 2006 conviction for theft, and under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact. The consular officer found that the Applicant made material representations regarding her criminal record when she applied for an immigrant visa in 2019 and a tourist visa in 2011.

In the denial of the waiver application, the Director concluded that although the Applicant met the waiver requirements under section 212(h)(1)(A) of the Act regarding her crime involving moral turpitude, she remains inadmissible for willful misrepresentation. The Director further determined that the record did not establish that her LPR spouse, the only qualifying relative under section 212(i) of the Act, would suffer extreme hardship if she is denied admission. The Director found that the Applicant did not submit sufficient evidence to establish that her spouse would suffer emotional or physical difficulties that would rise to the level of extreme hardship. The Director noted that while the record contained medical documents that reflected the spouse's sleep apnea diagnosis, no evidence was submitted to show that he was unable to obtain the medical attention he requires in the United States. The Director acknowledged that the spouse's medical condition has become a hardship for their daughter because he lives with her, and considered this hardship experienced by their daughter as it affected the qualifying relative spouse. However, the Director determined the evidence in its totality did not demonstrate that the adverse effect of the Applicant's continued separation from her family is greater than one would expect from a prolonged absence of a loved one due to inadmissibility.

On appeal, the Applicant contends that she is not inadmissible because she never willfully misrepresented any facts. The Applicant states that her children completed the visa forms for her because she did not understand English, they did not know about her criminal record, and the Applicant was not aware of the forms' contents. She asserts that she did not intend to lie about her 2006 conviction for theft, the police told her that the criminal record would be erased after a few years, and the misunderstanding was due to her lack of education. She contends that her 72-year-old spouse and daughter will suffer extreme hardship if she is refused admission. She asserts that her spouse requires her intensive care as he suffers from sleep apnea and other chronic illnesses and her daughter needs the Applicant's help to care for her young children so she can return to her career. The Applicant states that she suffers severe emotional stress by living alone in [redacted] due to the instability and

political situation; she hopes to reunite with her spouse, children, and grandchildren in the United States; and she can no longer bear the pain of being separated from her family.

While we acknowledge the Applicant's assertions that she did not willfully misrepresent facts, because she is residing abroad and applying for an immigrant visa, DOS makes the final determination concerning admissibility and eligibility for a visa. As a result of the consular officer's finding of inadmissibility, the Applicant requires a waiver under section 212(i) of the Act. There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the Applicant's United States citizen or LPR spouse or parent and the Applicant demonstrates that she merits a waiver as a matter of discretion. As noted by the Director, the qualifying relative for a section 212(i) waiver in this case is the Applicant's LPR 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 (discussing, as guidance, how applicants can establish extreme hardship upon separation or relocation). In the present case, the Applicant's spouse indicates he intends to remain in the United States if the waiver application is denied.

The Applicant has submitted the following documentation in support of the waiver application and appeal: a personal affidavit and affidavits from her spouse and children, and community members; her spouse's medical records and a letter from his doctor; and documents related to the Applicant's rehabilitation and good moral character. The Applicant's spouse contends that he would experience extreme hardship were he to remain in the United States without the Applicant and that continued separation from the Applicant would cause him emotional and physical hardship. He explains that the Applicant, whom he married in 1979, provides him with psychological and emotional support, especially after the death of his parents and the violent robbery he experienced a few years ago; he feels dismal and insecure without her; and he fears that he will have a mental breakdown if the separation continues. The Applicant's spouse states that he suffers from sleep apnea, high blood pressure and cholesterol, and chronic body pain; his spouse is the only suitable person to provide the required daily monitoring as she has assisted him for over 40 years; and his daughter is unable to help him because she must care for her husband and children. He further indicates that their grandchildren would suffer upon the Applicant's continued separation because he and the Applicant cared for them when they lived in [redacted] they need their grandmother's support and caring; and due to the spouse's health condition, it is impossible for him to care for them alone.

On appeal, the Applicant has still not submitted sufficient evidence to establish that her spouse's hardships that would result from their continued separation, considered individually and cumulatively, would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship. Though the affidavits indicate the Applicant is emotionally and physically supportive of her spouse, daughter, and grandchildren, the record does not establish that continued separation would result in her spouse being unable to obtain the necessary medical and psychological care and attention

he requires or impair his ability to function in his daily life to the extent that the resulting difficulties would rise to the level of extreme hardship. We note that while the record contains medical reports and a letter from his doctor confirming his severe sleep apnea, the Applicant has not submitted additional medical documentation to support her assertion that her spouse also suffers from multiple chronic illnesses. The record also indicates that the Applicant's spouse has a close relationship with their daughter and young grandchildren, he lives with their daughter's family, and their daughter helps to care for him. The record does not establish that the Applicant's spouse would lack emotional and physical support from his family if the waiver application is denied.

In conclusion, although the record demonstrates that the Applicant's spouse may experience emotional and physical difficulties due to continued separation from the Applicant, the totality of the evidence is insufficient to show that the hardship would rise beyond the common results of removal or inadmissibility if he remains in the United States. We also acknowledge that though the difficulties the Applicant's and her spouse's daughter and grandchildren may experience without the Applicant may impact the spouse, the record does not establish that any hardship he would experience, even considered in the aggregate, would rise to the level of extreme hardship.

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 in the event of continued separation, 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; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. at 806. Here, she has not met that burden.

ORDER: The appeal is dismissed.