U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17791037

Date: MARCH 9, 2022

Appeal of Philadelphia 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 the Immigration and Nationality Act (the Act) section 212(h)(1)(B), 8 U.S.C. § 1182(h)(1)(B), for a violation of the Controlled Substances Act, 21 U.S.C. § 802.

The Director of the Philadelphia Field Office in Pennsylvania denied the application. She concluded that the Applicant did not establish that any qualifying relative would suffer extreme hardship if his waiver application was denied. On appeal the Applicant asserts that the Director's decision improperly analyzed the financial, emotional, and medical hardships the Applicant's wife and children would experience if he is forced to return to his native Dominica and she either relocates there with her husband and their daughter or remains in the United States without her husband. The Applicant requests that the appeal be sustained and the waiver application approved.

The AAO reviews the questions in this matter *do novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 *de novo* review, we determine that the Applicant's wife and children will experience extreme hardship if his waiver application is denied and he is forced to return to Dominica. Accordingly, we will withdraw the Director's decision and remand this case for the Director to determine whether the Applicant merits a waiver of the grounds of inadmissibility.

I. LAW

Section 212(a)(2)(A)(i)(II) 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 "violation of (or 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.

Noncitizens found inadmissible under section 212(a)(2)(A)(i)(II) of the Act for a violation of the Controlled Substances Act relating 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. Section 212(h)(1)(A) of the Act provides for a waiver where the activities occurred more than 15 years before the date of the application if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the noncitizen has been rehabilitated. 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 (LPR) 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. *See 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. *See Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). In these proceedings it is the applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

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 to a foreign country 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.

II. ANALYSIS

The record indicates that the Applicant was born in Dominica in 1991, came to the United States with his parents as a 12-year old on a visitor visa in 2003, overstayed his visa, and has resided in the United States unlawfully ever since. In [redacted] 2012 the Applicant was arrested in New Jersey and charged with several drug offenses. In [redacted] 2013 the Applicant pleaded guilty to possession of less than 30 grams of marijuana, and his other charges were dismissed. In [redacted] 2014 the Applicant had a son with a U.S. citizen whom he married in [redacted] 2014, and subsequently divorced in [redacted] 2017. The Applicant married his current wife, also a U.S. citizen, in [redacted] 2017, and in [redacted] 2019 they had a daughter. Both of the Applicant's children, by his first wife and his second, are U.S. citizens. The Applicant's mother is now a lawful permanent resident of the United States, and his father is a U.S. citizen.

On March 5, 2018, the Applicant's current wife filed a Form I-130, Petition for Alien Relative, on his behalf, and on the same date the Applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. In response to a notice of intent to deny the Form I-485 application the

Applicant filed his Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), on February 3, 2020. In response to a request for evidence the Applicant supplemented the waiver application with supporting documentation. No definitive statement was submitted by the Applicant's wife, or any other qualifying relative, whether they would relocate with the Applicant to Dominica or remain in the United States without him if his waiver application is denied.

On December 14, 2020, the Director approved the Form I-130 petition, but denied the waiver application. In her decision denying the waiver application the Director confirmed that the Applicant was eligible to request a waiver of his criminal inadmissibility based on extreme hardship to a qualifying relative under section 212(h)(1)(B) of the Act because his conviction was for less than 30 grams of marijuana.[1] However, the Director determined that the Applicant did not establish that his wife would suffer an extreme hardship either economically or emotionally in the event of the waiver application's denial. The Director stated that the Applicant's removal would cause some economic dislocation, but noted that his wife is employed, may have additional means of support, and had close family members nearby who could provide assistance if needed. Nor did the Applicant establish that his wife suffers from any psychological malady which requires the Applicant's personal care or that would be worsened by the Applicant's departure. The Director noted that the Applicant and his wife could stay in video and telephone contact between Dominica and the United States. The Director acknowledged that the standards of living and medical care are lower in Dominica than in the United States, but indicated that this difference did not represent an extreme hardship to the Applicant's wife beyond the typical results of deportation and removal if she chooses to relocate with the Applicant to Dominica.

On appeal counsel for the Applicant points out that the Director did not address the Applicant's children, and the extreme hardship they would assertedly experience if their father is removed from the United States. In fact, there are five qualifying relatives in this case – including the Applicant's U.S. citizen wife, his LPR mother and U.S. citizen father, his U.S. citizen son from his first wife, and his U.S. citizen daughter from his current wife. If the Applicant's wife stays in the United States, she indicates that their two-year old daughter (born in [redacted] 2019) would remain with her and thereby lack significant and direct daily contact with her father. In addition, if the Applicant is removed to Dominica his eight-year old son (born in [redacted] 2014), who resides with his mother (the Applicant's first U.S. wife) and currently visits his father every other weekend, would likewise lack regular in-person contact with his father. Should the Applicant's wife decide to accompany the Applicant to Dominica with their daughter, this would sharply curtail the regular in-person contact of the Applicant's son not only with his father, but also with his half-sister. Finally, the Applicant's removal to Dominica would reduce his regular contact with his LPR mother and U.S. citizen father, who would remain in the United States.

In two long statements submitted in response to the Director's request for evidence and on appeal, the Applicant's wife described the hardships she and the Applicant's children would experience if his waiver application is denied. Her first statement began with the assertion that her husband's removal would be "devastating to myself and our [at that time] infant daughter." She wrote that "when [the Applicant] is home he always gives me a break with the baby and helps to feed and change her. . . .

[1] Since the crime was committed less than 15 years before the filing of the Applicant's adjustment of status application, a waiver under section 212(h)(1)(A) of the Act was precluded.

This has allowed me to not feel so overwhelmed because I know he will always be there to support me." The Applicant's wife stated that she was "very concerned" that health care in Dominica was not up to U.S. standards, which could be a problem for their young daughter who was diagnosed with a medical condition which may need ongoing treatment. The Applicant's wife went on to state that their daughter "is not the only child that would be negatively impacted if [the Applicant] was not allowed to remain in the US. [The Applicant] has a five year old [at that time] son from a previous relationship. His son is a big part of our family. We get him every other weekend from Friday evening to Sunday evening. . . . After spending a lot of time with his son I too have formed my own relationship with him. . . . If [the Applicant] were to have to leave the country my daughter and the relationship she could have with her [half-]brother would be greatly impacted. . . . then my daughter would lose the opportunity to build a bond with her big brother. . . . It would be devastating to have to rip these kids apart . . . We both want nothing more than to continue to raise our children in a two parent household."

In her second statement, submitted with the appeal, the Applicant's wife reiterates her distress at the threatened breakup of the family if her husband is removed to Dominica. "When we got the letter that the [waiver application] was denied," she states, "I actually had to request a personal leave of absence from work. . . .[M]y mind was just stuck on the thought of my family being torn apart and I just could not cope. . . . Tearing us apart would turn our whole world upside down. Not to mention [the Applicant] also has a 6 soon to be 7 year old son who looks forward to his weekend visits with his dad. His son's life would also be greatly impacted. . . . [The Applicant] plays a huge role in his son's life . . . [and] is also required to pay child support to [his son's] mother [the loss of which would] "hurt his son." In closing the Applicant's wife asserted that "[t]he Applicant is vital to all of us on a day to day basis that the hardship we would face cannot even be put into words. We would all lose out on the opportunity to continue to grow and thrive as a family unit."

In addition to the emotional hardship discussed by the Applicant's wife, to herself and the Applicant's two children, her statements also discuss the financial hardships she and her daughter would face without the Applicant's income. Documentation pertaining to the family's financial situation includes a list of the household's monthly expenses, federal tax returns and earnings statements of the Applicant and his wife, bank and credit card statements, selected bills, a car loan, a residential lease, and the Applicant's child support payments to his former wife. The Applicant's wife also discussed her own medical problem of debilitating lower back pain, stating that "[t]here are days when I am in too much pain to even take care of myself. When that happens I just have to stay in bed and [the Applicant] takes over all of the household duties. . . . If he had to leave I would lose my only support system." The Applicant's wife stated that she was also under the care of a gastroenterologist for "severe stomach and chest pains . . . which leaves me useless to our child. I rely on [the Applicant] on a daily basis. He takes care of me when I am not able to do things, and he also cares for our child." As evidence of his wife's medical conditions the Applicant submits a series of reports from a physical therapist documenting diagnoses of acute exacerbation of chronic low back pain and chronic bilateral low back pain without sciatica and her treatment for those conditions.

The financial and medical hardships claimed by the Applicant's wife, in and of themselves, may not be enough to establish that any of the Applicant's qualifying relatives would experience extreme hardship if he is removed from the United States. However, the emotional hardships that his wife and two children would experience if the Applicant is required to return to Dominica and the family is separated from regular daily in-person contact, when aggregated with the financial and medical

hardships, would constitute extreme hardship. If his wife stays in the United States with their currently two-year old daughter, then both the Applicant's wife and daughter would be separated from him and the daughter would lose her father's regular in-person presence during her years growing up. If his wife and daughter relocate to Dominica with the Applicant, all three will be separated from other family members in the United States including the Applicant's parents and his other child, each of whom is a qualifying relative in this proceeding. As a result the Applicant's daughter would be separated from her half-brother and the Applicant's parents (her paternal grandparents) during her formative years. Moreover, regardless of whether the Applicant's wife and daughter stay in the United States or relocate to Dominica, the Applicant's currently eight-year old son, who lives with his mother, would be separated from his father during his formative years because he would no longer be able to visit his father in person regularly on weekends. Under any and all of these scenarios, therefore, the family would be separated if the Applicant's waiver application is denied. When aggregated with the financial and medical hardships described by the Applicant's wife, we conclude that the emotional hardships the Applicant's wife and children would experience if the Applicant is removed from the United States rise to the level of extreme hardship. *See Matter of Ige*, 20 I&N Dec. at 882.

III. CONCLUSION

Since we have determined that qualifying relatives will experience extreme hardship if the Applicant is removed from the United States, we will remand this case to the Director for a determination, in the exercise of discretion, as to whether the Applicant warrants a waiver of the grounds of inadmissibility.

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