U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20861711

Date: MAY 19, 2022

Appeal of Tampa, Florida Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of Cuba currently residing in the United States, has applied to adjust status to that of a lawful permanent resident. A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for multiple criminal convictions pursuant to section 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(B), and seeks a waiver of that inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h).[1] U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Tampa, Florida Field Office denied the waiver application, concluding that the record did not establish that the Applicant's qualifying relatives, his legal permanent resident parents and U.S. citizen wife, would suffer extreme hardship if the waiver were denied. The matter is now before us on appeal.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), states in relevant part that any noncitizen convicted of a crime involving moral turpitude (other than a purely political offense) is inadmissible.

[1] In their denial, the Director also found that the Applicant deportable under section 237(a)(2)(A)(II)(ii) of the Act, 8 U.S.C. § 1227(a)(2)(A)(II)(ii), for being convicted of multiple crimes involving moral turpitude. However, Form I-601, Application for Waiver of Grounds of Inadmissibility, is filed by applicants seeking waivers of inadmissibility. *See* Instructions for Application for Waiver of Grounds of Inadmissibility, at 1, 9-13, https://uscis.gov/sites/default/files/document/forms/i-601instr.pdf; *see also* 8 C.F.R. § 103.2(a)(1) (incorporating form instructions into regulations requiring its submission).

Section 212(a)(2)(B) of the Act provides in relevant part that any noncitizen convicted of two or more offenses (other than purely political offenses) for which the aggregate sentences to confinement were five years or more is inadmissible.

A discretionary waiver for these grounds of inadmissibility is available under section 212(h)(1)(B) of the Act if denial of admission would result in extreme hardship to the noncitizen's U.S. 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. *Matter of Pilch*, 21 I&N Dec. 627, 630-1 (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 1995) (citations omitted).

II. ANALYSIS

A. Grounds of Inadmissibility

In their denial, the Director found the Applicant inadmissible under section 212(a)(2)(B) of the Act for multiple criminal convictions. The Applicant does not contest this finding. The record indicates that from 2013 to 2014, the Applicant was convicted of, among other offenses:

- Possession of a forged credit card (15 counts);
- Grand theft in the third degree;
- Petit theft in the first degree (2 counts);
- Petit theft in the second degree, first offense;
- Fraudulent use of personal identification information;
- Fraudulent use of credit cards (4 counts); and
- Battery.

However, while the Applicant was sentenced at various points to 30 days to five months of confinement, the record does not indicate that the Applicant was sentenced in the aggregate to at least five years of confinement. Therefore, we withdraw the Director's finding that the Applicant is inadmissible under section 212(a)(2)(B) of the Act.

A conviction for fraudulent use of a credit card in violation of Fla. Stat. § 817.61 is categorically a crime involving moral turpitude (CIMT), since it requires a specific intent to defraud. *See Matter of Silva-Trevino*, 26 I&N Dec. 826, 828 n.2, 833-34 (BIA 2012); *see also Matter of Adetiba*, 20 I&N Dec. 506, 512 (BIA 1992); *Matter of Chouinard*, 11 I&N Dec. 839 (BIA 1966). Similarly, a conviction for fraudulent use of personal identification information under Florida Statutes § 817.568(2)(a) is also categorically a CIMT. *See Vilchiz-Bello v. U.S. Attorney General*, 709 Fed.

Appx. 596 (11th Cir. 2017). The Applicant was also convicted of 15 counts under Fla. Sta. § 817.60(6)(a), which states in pertinent part that "[a] person who…with intent to defraud, has a counterfeit credit card or any invoice, voucher, sales draft, or other representation or manifestation of a counterfeit credit card in his or her possession, custody, or control is guilty of credit card forgery." Since this statute also requires a specific intent to defraud, it is also a CIMT. [2]

Since the Applicant was convicted under these statutes, the Applicant is inadmissible to the United States under section 212(a)(2)(A)(i) of the Act for being convicted of a crime involving moral turpitude. Since this ground of inadmissibility may be waived under section 212(a)(1)(B) of the Act if denial of admission would result in extreme hardship to the Applicant's qualifying relatives, we will address the Applicant's hardship arguments on appeal.

B. Waiver of Inadmissibility

The Applicant seeks a waiver of inadmissibility under section 212(h)(1)(B) of the Act, stating that his U.S. citizen wife and legal permanent resident parents will suffer extreme hardship if his application is denied. 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(s) certifying under penalty of perjury that the qualifying relative(s) 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 does not specify whether the Applicant's qualifying relatives would remain in the United States or relocate to Cuba if the Applicant's waiver application is denied. The Applicant must therefore establish that if his waiver application is denied admission, his relatives would experience extreme hardship both upon separation and relocation. Although we are sympathetic to the family's circumstances, we conclude that if the Applicant's spouse and parents remain in the United States without the Applicant, the record is insufficient to show that his hardship would rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

On appeal, the Applicant contends that his wife and parents would undergo extreme financial hardship if his application were denied. To support this claim, he submits statements from his qualifying relatives and a statement of finances, as well as financial documents that were previously submitted in support of the underlying Form I-601.

The Applicant states on appeal that his family's monthly household expenses are as follows:

- Rent: $900;
- Food: $1,200;
- Clothing: $400;
- Utilities: $1,000;

[2] *See Jordan v. De George*, 341 U.S. 223, 232 (1951) ("crimes in which fraud [is] an ingredient have always been regarded as involving moral turpitude.")

- Phone: $331;
- Car Insurance: $620;
- Medicine: $150; and
- Medical Insurance: $350.

This comes to a total of $4,951 a month, or $59,412 a year. To support these claims, the Applicant submits the following financial documents:

- Water bills from October 2019 and January 2020 for $182.81 and $209.77, respectively;
- Car payment bill from January 2020 for $640 before late fees; and
- Electricity bill from January 2020 for $135.61.

The total monthly utility payments shown in this documentation are significantly lower than the $1,000 per month claimed in the statement of expenses. There is also no documentation of the claimed rent, food, clothing, phone, car insurance, medicine, or medical insurance costs. An applicant must support their assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The statement further says that the Applicant earns $4,000 a month, or $48,000 a year, and that his wife earns $2,400 a month in income, or $28,800 a year, for a total of $76,800 a year in household income. To document this income, the Applicant submitted his 2017 and 2018 federal individual income tax returns, filed jointly with his wife.

The 2017 income tax return states that the Applicant and his wife earned a total of $21,745 in income that year. The 2018 tax return indicates that the Applicant and his wife had $33,234 in total income. Neither the 2017 nor the 2018 tax returns match the Applicant's statements regarding his household income. The record does not include any documentation of the household's 2019 income. Because the Applicant's statement is not supported by the documentation of record regarding expenses or income, its evidentiary weight is limited.

The record indicates that the Applicant's parents do not work and rely on the Applicant and his wife for financial support. According to the statement of the Applicant's wife, their income mostly comes from the company that she and her husband run together, [redacted] which has four employees. According to her, "if [Applicant] was not here to coordinate the work and do it" she would have to shut down the company, and then she would "not have enough to cover all basic household needs and expenses."

First, it is not apparent why the employees of [redacted] would not be able to continue the work of the company in the Applicant's absence. Second, the Applicant's household has income from sources other than the company, as demonstrated by the Applicant's wife earnings as a self-employed delivery driver.[3] While the Applicant's wife states that without the company income, she would not be able to cover basic expenses, the evidence of record does not suffice to establish what the household expenses actually are. Therefore, it is not possible to determine whether the loss

[3] The IRS Schedule C, Profit or Loss From Business (Sole Proprietorship) forms included with the tax returns indicate that the Applicant's wife earned a net profit of $12,751 as a self-employed delivery driver in 2017 and $10,776 in 2018.

of the Applicant's income or the possible loss of the company would result in extreme economic hardship to the Applicant's wife and parents. Finally, we note that the Applicant's wife has a 33-year-old son from a previous relationship who resides in the United States, and the record does not address to what extent he would be able to assist his mother if the Applicant's waiver application were denied.

The Applicant further states that his wife and father will experience extreme medical hardship if is waiver application were denied. To support these claims, he provides his wife's medical notes from doctor's visits in 2019: one regarding a routine mammogram, and one regarding an examination that found no health problems aside from pre-existing issues. These previously-diagnosed issues are listed as: type 2 diabetes, uncomplicated mild asthma, obesity, hypertension, hyperlipidemia, vitamin D deficiency, and an unspecified anxiety disorder.

The notes indicate that the Applicant's wife has been prescribed glucose testing strips, an anti-diabetes medication to be taken twice a day, and an anti-hypertension drug to be taken once a day. They also indicate that her anxiety is "well controlled on Bupropion," and recommend vitamin D supplements, follow-up visits, and treating her conditions through diet and exercise. It is not apparent from this documentation how her medical conditions have been affecting her "ability to attend to daily activities," as claimed in the statement she provides on appeal. In her statement, the Applicant's wife further states that she goes to the doctor two to three times a year and sometimes needs laboratory testing, and that her conditions affect her vision and joints. However, she does not specify how her vision or joints are affected or what daily activities in her life have been affected by her health conditions, and the evidence of record does not indicate how separation from the Applicant would affect those conditions. This does not suffice to establish that she will suffer extreme medical hardship if the Applicant is not granted an inadmissibility waiver.

To establish the medical hardship for his father, the Applicant provides translated medical records from 2015 indicating that his father had a "successful" angioplasty. A translated record from 2016 indicates that his father came to the hospital for chest pain and was discharged after a diagnosis of "acute coronary syndrome with ST elevation, not thrombolized, not involved." At this point, he was prescribed aspirin, hypertension medications, and two medications the translator was unable to translate. Another record from 2016 states that he experienced dizziness, probably as a side effect of one of his medications, and the rest of the 2016 records consist of medical imaging that is not explained in the record. Finally, the Applicant provides paperwork regarding a June 2020 medical appointment to determine his father's qualifications for Social Security disability benefits. This paperwork contains no information about any medical diagnoses or treatments.

The records regarding the Applicant's father's heart issues are from over five years ago and do not establish how his health would currently be affected if he were separated from his son. It is further noted that the Applicant's father was living in Cuba when the angioplasty and heart problems occurred, while the Applicant was living in the United States. It is not apparent from these records why, specifically, the Applicant's physical presence in the United States is required to prevent his father from suffering extreme medical hardship. While the statement from the Applicant's wife states that the Applicant's father has been "hospitalized on many occasions," the record does not contain

evidence of any hospitalizations past 2016. The totality of the evidence does not suffice to demonstrate how separation from the Applicant would cause his father extreme medical hardship.[4]

We acknowledge that travel and communications restrictions between the United States and Cuba would make visiting and staying in touch more difficult for the Applicant and his qualifying family members in the event of separation. We note, however, that the State Department's travel advisory for Cuba, which was included on appeal, applies to employees of U.S. Embassy Havana, and so would not apply to the Applicant's qualifying family members.[5] Similarly, while the human rights reports included on appeal indicate that internet use in Cuba is restricted and monitored by the Cuban government, many of the examples of restrictions were in connection with political protests and human rights activism. This does not suffice to demonstrate that the Applicant would "rarely see or communicate with" his wife if upon separation to Cuba, as claimed in the attorney letter, or to establish how the Applicant's qualifying relatives, specifically, would undergo hardship that exceeds the common results of removability or inadmissibility of a close family member if the waiver application were denied.

III. CONCLUSION

We withdraw the Director's finding that the Applicant is inadmissible for multiple criminal convictions under section 212(a)(2)(B) of the Act and find that he is instead inadmissible under section 212(a)(2)(A)(i) of the Act for being convicted of crimes involving moral turpitude.

We acknowledge that the Applicant's wife and parents will undergo emotional and financial hardship if his waiver application is denied and he returns to Cuba. However, the totality of the documentation in the record, considered in the aggregate, does not suffice to demonstrate that this hardship will exceed that which is usual or expected when a close family member is removed or found inadmissible.

As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to his qualifying relatives both upon separation and upon relocation to Cuba. 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. Thus, we need not consider whether he merits a waiver in the exercise of discretion. The Applicant does not meet the requirements for a waiver of inadmissibility under section 212(h)(1)(B) of the Act.

ORDER: The appeal is dismissed.

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[4] We note that the Director's denial stated that the Applicant "provided no evidence [that] your father relies totally on you for his medical condition and support," and therefore did not demonstrate extreme medical hardship. There is no requirement that the qualifying relative rely totally on the Applicant in order to demonstrate extreme hardship. The hardship only has to exceed that which is usual or expected in cases of removal or inadmissibility. *Matter of Pilch,* 21 I&N Dec. at 630-1. However, as noted in our decision, the totality of the documentation in the record, considered in the aggregate, does not suffice to demonstrate that the hardship to his father will exceed that which is usual or expected.

[5] Cuba Travel Advisory, U.S. Dep't of State – Bureau of Consular Affairs, https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/cuba-travel-advisory.html (last visited May 16, 2022).