U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22727913

Date: SEP. 27, 2022

Appeal of Newark, New Jersey 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), for a crime involving moral turpitude.

The Director of the Newark, New Jersey Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's U.S. citizen son (his only qualifying relative) would experience extreme hardship if the waiver application is denied. On appeal, the Applicant contends that the Director overlooked relevant information in analyzing the hardship factors in his case and reached an erroneous conclusion.

We review the questions 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 noncitizen convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A).

Noncitizens found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). Where the activities resulting in inadmissibility occurred more than 15 years before the date of the application, a waiver is available 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)(A) of the Act. A waiver is also 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. If a noncitizen demonstrates their eligibility under section 212(h)(1)(A) or (B) of the Act, USCIS must then decide whether to exercise its discretion favorably and consent to the noncitizen's admission to the United States. Section 212(h)(2) 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 the applicant's burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe,* 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The primary issue on appeal is whether the Applicant established that his qualifying relative would experience extreme hardship if his waiver application is denied, and, if so, whether his application warrants a favorable exercise of discretion. The Applicant does not contest the Director's determination that he is inadmissible under section 212(a)(2)(A) of the Act based on his conviction for two separate [redacted] offenses that occurred in New Jersey in 2015 and 2016.

To establish his statutory eligibility for a waiver of inadmissibility for a crime involving moral turpitude, the Applicant must demonstrate that denial of his application would result in extreme hardship to his U.S. citizen son. 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 scenarios is not required if an applicant's evidence establishes that one of these scenarios would result from the denial of the waiver. Here, an affidavit from the Applicant's son indicates that he intends to remain in the United States and the Applicant must therefore demonstrate extreme hardship in the event of separation.

The Applicant filed the waiver application with an affidavit and supporting evidence that included: affidavits from his son, daughter-in-law, and two friends; proof of employment for himself and his son; a letter from his physician and his own medical records; 2020 individual income tax returns for himself and his son; copies of a lease agreement and monthly bills; family photographs; civil documents; a letter confirming his role as a confidential informant for the New Jersey Department of the Treasury; and articles and reports on country conditions in his home country of India.

The record reflects that the Applicant came to the United States from India in 2000, when his son was 10 years old. His son states that he moved to the United States in 2011, completed his university studies in Ohio, and developed a close relationship with the Applicant in 2016, when he relocated to New Jersey to undertake his current job as a project engineer. The submitted affidavits indicate that the Applicant and son have shared a residence since 2017 and developed a strong bond despite their earlier prolonged separation. In his affidavit, the Applicant's son states that they "have become integral to each other's lives" and that he greatly values the Applicant's day-to-day companionship.

He mentions that he and his spouse are considering starting their own family and that it "saddens us deeply to think about the possibility of our children not knowing their grandfather," especially due to his own prior separation from the Applicant. In addition, the Applicant's son emphasizes that, although his mother lives in New Jersey, he does not see her often and that, apart from his spouse, his father is the only close family he has. He expresses his sadness at the possibility of the Applicant returning to India alone, and articulates concerns for his father's emotional and physical health and quality of life upon relocation. He particularly stresses the Applicant's medical conditions[1] and his lack of a support system in India after spending two decades in the United States. The Applicant's son emphasizes that it is important to him that he be there for his father as he grows older and indicates that it truly worries him that the stress of having to leave the United States could have significant negative effects on his father's mental and physical well-being.

The Applicant's son also states that the income his father earns through his employment with a retail fast food chain "is essential for our family to make ends meet." He notes that his spouse only recently obtained her lawful permanent residence and U.S. social security number and was not yet employed, while he has been supplementing his own income by working part-time as an Uber driver. Finally, he expresses that he wants his father to remain in his life and in the lives of his future children, and he cannot imagine his life without him. An affidavit from the Applicant's daughter-in-law conveys similar sentiments. She notes that the Applicant's health is "a serious concern" for her spouse and "it would devastate him to be permanently separated" because he "would continually wonder if he was okay." Affidavits from two of the Applicant's friends attest to the Applicant's close bond with his adult son and their mutually supportive relationship.

In denying the waiver application, the Director acknowledged that the Applicant's son would experience emotional hardship upon separation from his father but concluded that the record did not contain evidence documenting the nature or severity of such hardship. The Director emphasized that most relationships with qualifying relatives involve a deep level of affection and emotional interdependence and therefore result in considerable emotional hardship when family members must separate. In this regard, the Director observed that the "extreme hardship" standard reflects that Congress did not intend for a waiver of inadmissibility to be granted in every case where familial and emotional bonds exist. The Director also referenced the Applicant's son's statement that the Applicant's income is "essential to our family to make ends meet." However, the Director emphasized that the Applicant did not document his contribution to the finances or otherwise provide evidence to support this statement. Specifically, the Director noted that, according to the submitted tax returns, the qualifying relative's 2020 income was over $56,000 while the Applicant earned approximately $8,500. Finally, the Director observed that the evidence and hardship claims presented primarily relate to the Applicant's own hardships, rather than to the hardships that his qualifying relative would experience upon separation.

On appeal, the Applicant, through counsel, asserts that the Director failed to consider the significant psychological effect the Applicant's departure would have on his son, as the decision "negated all evidence related to the suffering, medical issues and financial uncertainty that [he] would face if returned to India." The Applicant maintains that the Director disregarded the cumulative effect of

[1] The record establishes that the Applicant is being treated for hypertension and coronary artery disease. His treatment includes several daily medications, regular visits to his physicians, and two cardiac stent procedures performed in 2019.

how his hardships would impact his son, and erroneously dismissed this evidence as irrelevant. In this regard, the appellate brief references the Applicant's medical condition, his age, his lack of employment prospects in India, and his lack of family and social ties in his home country, noting that all these factors will weigh negatively on his son's emotional and psychological well-being. In addition, the Applicant that the Director failed to consider the financial hardship that his son would suffer in attempting to maintain two households, noting that the financial burden of supporting him in India would necessarily fall on his son.

The Applicant further asserts that the record establishes that his son has "real and plausible" concerns for his father's health, and that the Director did not give sufficient weight to the emotional and psychological impact this would have on his son, who noted in his affidavit the importance of being able to live with his father to monitor his health, medications, and visits to physicians. Finally, the Applicant objects to the Director's determination that the emotional hardship to be faced by his son would not go beyond the common or typical result of family separation. In this regard, the Applicant states that the Director did not consider the "special circumstances" present in their relationship, their recent efforts to rebuild a close bond after a long separation, and the "emotional toll a second separation would take on [the Applicant's] son."

We acknowledge that one of the factors to be considered in making an extreme hardship determination is any psychological impact on the qualifying relative due to the suffering of the applicant. The Director's decision reflects that he considered the Applicant's son's statements regarding the close bond he shares with his father and the emotional hardship he would face upon separation from him. We have also considered the specific concerns that the Applicant's son has expressed regarding the prospective hardships the Applicant would encounter if removed to India, where he is likely to receive lower-quality medical care, to have fewer employment opportunities, and to lack the support of family and friends that he enjoys in the United States. With respect to the Applicant's medical status, we note that while his son states that he is the Applicant's "primary caregiver," the evidence submitted does not support a determination that the Applicant's health requires constant monitoring by an in-home caregiver. For example, a letter from the Applicant's employer indicates that he works up to 60 hours per week. His condition appears to be well-managed with medication and it has not been claimed that he would have to discontinue his treatment if he is required to return to India.

The submitted affidavits demonstrate that the Applicant and his son enjoy a close and supportive relationship and that the Applicant's son and his spouse wish for their future children to have their grandfather in their lives. He would undoubtedly endure the emotional burden of separation from a loved one. We also recognize that, based on the circumstances here, the Applicant's son would reasonably carry an additional burden due to worries about his father's health and overall well-being if he returns to India alone. However, we agree with the Director's determination that the record does not document the nature or severity of any psychological impact this potential separation would have on his son or whether or how it would affect his day-to-day life. The Applicant has not provided, for example, evidence that his son has been evaluated by a mental health professional or that he has any diagnosed mental health condition that may be exacerbated by separation from his father or the emotional or psychological effects of such a separation. The Applicant's son is a long-time resident of the United States, has a spouse and other family here, and therefore appears to have emotional and social support and other resources available to him even if his father must depart and return to India.

We have also considered the claim that the Director did not fully consider the financial or economic hardships of separation present in this case. As noted, the Applicant shares a residence with his son and his son's spouse. Although the Applicant's son indicates that the household relies on his father's income from a retail job to make ends meet, the Director correctly determined that the financial documentation submitted did not support that claim or show that the loss of the Applicant's income would impose significant economic consequences on his son.

As noted, the Applicant asserts on appeal that the Director did not consider the fact that the Applicant's son would not only lose his father's income upon separation but would carry the additional burden of having to provide for his father's living expenses in India. The Applicant's son did not make any reference to such expenses in his affidavit, and we therefore cannot conclude that the Director erred by failing to consider this additional claim of financial hardship. Regardless, the evidence in the record does not provide a full picture of the family's overall financial situation or the Applicant's expected costs of living in India. Without this evidence, we cannot determine the extent of any additional financial hardships that may impact the Applicant's son, although we acknowledge that he may be confronted with some additional expenses related to travel to India or making remittances to his father. Here, the record also indicates that, at the time of filing, the household anticipated receiving additional income from the Applicant's son's spouse and we note that such income would likely lessen the financial hardship associated with separation. As noted above, economic detriment is a common consequence for qualifying relatives when an applicant is denied admission but will be considered with all other hardship factors claimed.

We acknowledge the emotional stress and worry the Applicant's son is likely to experience if his father is required to leave the United States, and the potential for some degree of strain in the family's financial situation, particularly if the Applicant is unable to support himself in India. We are sympathetic to the family's circumstances, but considering all the evidence in its totality, the record remains insufficient to show that the aggregated financial, psychological and emotional hardships of separation would be unusual or atypical to the extent that they rise to the level of extreme hardship.

III. CONCLUSION

As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to his qualifying relative. Because the Applicant has not demonstrated extreme hardship to his qualifying relative if he is denied admission, we need not consider whether he merits a waiver in the exercise of discretion. [2] The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("agencies are not required to make findings on issues the decision of which is necessary to the results they reach."); *see also Matter of L-A-C-*, 16 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where a petitioner or applicant is otherwise ineligible).