U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27393614

Date: AUG. 25, 2023

Appeal of Mount Laurel, New Jersey Field Office Decision

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

The Applicant, a native and citizen of India, 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(i). The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. 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 Mount Laurel, New Jersey Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the record did not establish that the Applicant did not establish his qualifying relative – his U.S. citizen spouse – would suffer extreme hardship if his application were denied. The Director additionally concluded the Applicant had not established a favorable exercise of discretion was warranted in his case. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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 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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act. If the noncitizen demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. 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).

Once the noncitizen demonstrates the requisite extreme hardship, they must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the noncitizen to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez*, 21 I&N 296, 299 (BIA 1996). We must balance the adverse factors evidencing an applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted).

II. ANALYSIS

The Applicant does not contest his inadmissibility, as described in the Director's decision, which we incorporate here. We begin by addressing a procedural issue the Applicant considers to be an error on the Director's part. The Applicant argues the Director failed to follow proper procedure in declining to issue a request for evidence (RFE) or notice of intent to deny (NOID) before denying the application because there was a possibility he could have overcome a finding of ineligibility. The regulation at 8 C.F.R. § 103.2(b)(8)(ii) provides: "If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS." Therefore, the Director is not required to issue an RFE in every potentially deniable case and has discretionary authority to deny the petition for lack of initial evidence without issuing an RFE. 8 C.F.R. § 103.2(b)(8)(ii); *see generally* 1 *USCIS Policy Manual* E.6(F), https://www.uscis.gov/policy-manual (stating that USCIS has the discretion to deny a benefit request without issuing an RFE or NOID). The regulation at 8 C.F.R. § 103.2(b)(8) does not require solicitation of further documentation, if the missing or inadequate evidence is included as initial evidence within the regulation governing the classification or the form instructions. The Director's decision not to issue such a notice was not in direct breach of USCIS policy as the Applicant contends on appeal.

Next, the Applicant asserts, through counsel, that the grounds for denial could have been overcome had the Applicant been provided notice of the issues and opportunity to respond with additional evidence. The affected party has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become

qualified under a new set of facts."). The instructions associated with the Form I-601 indicate "all evidence and supporting documentation" must be submitted at the time of filing, and the instructions provide non-exhaustive lists of types of evidence that is expected. Form I-601 Instructions, at 3, 17-18 (last updated Apr. 7, 2022). As such, the Applicant was provided notice of the requirements of the application and the necessary evidence that should be provided, and now on appeal, he does not attempt to submit any additional evidence.

The Applicant concurrently filed his waiver application and a Form I-485, Application to Register Permanent Residence or Adjust Status. The Director denied the waiver application because the Applicant did not establish his U.S. citizen spouse would suffer extreme hardship if he were denied admission to the United States. In denying the waiver application, the Director made an alternate determination that even if the Applicant had established his spouse would experience extreme hardship, he did not merit a favorable exercise of discretion.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case his U.S. citizen spouse. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relatives remain in the United States separated from the applicant and 2) if the qualifying relatives relocate overseas with the applicant. *See* 9 *USCIS Policy Manual* B.4(B) (providing, as guidance, the scenarios to consider in making extreme hardship determinations). 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. *See id.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002)). 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 id.* In the present case, the record is unclear whether the Applicant's spouse would remain in the United States or relocate to India if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

The Applicant married his U.S. citizen spouse in 2017, and they do not have any shared children. The Applicant's spouse claims in her written statement that the Applicant works as a gas station attendant and is the primary financial earner in their household. She further notes the couple assists her parents financially, and her parents reside with the couple part time. The Applicant's spouse indicates she has been diagnosed with a pituitary adenoma, which has reduced her ability to work and complete some household tasks due to increased fatigue, weakness, headaches, and nausea. She does not believe she could support herself in the United States without the help of the Applicant, nor does she believe she could move to India with the Applicant.

Although we are sympathetic to the family's circumstances, we find no error in the Director's conclusion that in the case of either separation or relocation, the record is insufficient to show that her hardship would rise beyond the common results of removal or inadmissibility. The record indicates the Applicant's spouse has been diagnosed with a pituitary adenoma and was under the care of a doctor as of August 2020. However, the record lacks detail as to whether treatment is ongoing, what kind of medications or care she requires, and the specific assistance she requires from the Applicant. Relatedly, the Applicant has not established his spouse would be unable to receive any necessary care

in India. Without more information and a complete representation of the spouse's medical situation, we cannot fully ascertain the impact of separation or relocation on the Applicant's spouse. Further, the Applicant has not provided objective evidence that his spouse would be unable to accompany him and legally reside in India. Although she is a U.S. citizen, she is married to an Indian citizen, and the Applicant has not explained why this would not allow his spouse to reside with him in India. He has provided general country conditions evidence; however, he did not establish how in his specific case, his spouse would suffer extreme hardship upon relocation to India.

Regarding the spouse's parents, although their hardship may be considered to the extent it causes hardship to the Applicant's spouse, the only qualifying relative in this case, we note that the parents are adults, and the statements from the Applicant's spouse in the record does not indicate any specific health concerns or special needs they are facing. Although the spouse claims her parents live with her and the Applicant part time and rely on them for some financial support, she notes they also reside with her brother and receive financial support from him. In the summary of household expenses in the spouse's statement, there is no indication of what amount of financial support she and the Applicant provide for her parents. Additionally, based on the evidence in the record, it is not clear that the spouse's brother would be unable or unwilling to assist the spouse's parents such that the hardship the Applicant's spouse experiences would be reduced. We acknowledge separation from the Applicant will likely cause his in-laws emotional hardship, which is a factor we have considered to the extent it will affect the Applicant's qualifying relative – his spouse. However, even considering all of the evidence in its totality and taken in the aggregate, the record remains insufficient to show that the qualifying relative's claimed financial, mental, and physical hardships would be unique or atypical, rising to the level of extreme hardship, whether she remains in the United States or relocates abroad with the Applicant due to his inadmissibility.

III. CONCLUSION

As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to his spouse both upon separation and relocation to India. As the Applicant has not established extreme hardship to his spouse in the event of separation or relocation, we cannot conclude he has met this requirement. 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. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.