U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29665918

Date: DEC. 21, 2023

Appeal of Norfolk, Virgina Field Office Decision

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

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h) to waive inadmissibility under section 212(a)(2)(B) of the Act for having been convicted of two or more offenses for which the aggregate sentences to confinement were five years or more. The Director of the Norfolk, Virgina Field Office denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, concluding that no purpose would be served in adjudicating the merits of the section 212(h) waiver application, because the Applicant was also inadmissible under section 212(a)(6)(C)(i) of the Act for fraud and misrepresentation and the record did not establish eligibility for a waiver of such inadmissibility under section 212(i) of the Act as he did not demonstrate that he had a qualifying relative, as required for that waiver.[1] 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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 this ground of inadmissibility is available under section 212(h)(l)(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.[2]

Section 212(a)(6)(C)(i) of the Act renders inadmissible 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, admission into the United States, or other benefit provided under the Act. A

[1] The Applicant also has a U.S. citizen daughter who is a qualifying relative for purposes of a waiver under section 212(h) of the Act, but who is not a qualifying relative under section 212(a)(6)(C)(i) of the Act.

[2] Additional discretionary waivers of inadmissibility are available under subsections 212(h)(1)(A) and (C) of the Act that are inapplicable in this case.

discretionary waiver for this ground of inadmissibility is available under section 212(i) of the Act if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act. If a noncitizen seeking a waiver under either of these sections of the Act demonstrates the existence of the required hardship, they must also show they merit a favorable exercise of discretion on their waiver request.

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). 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).

The Applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status, in February 2022 based on his marriage to a U.S. citizen.[3] Shortly thereafter, in March 2022, the Applicant submitted his Form I-601 to overcome the ground of inadmissibility found in section 212(a)(2)(B) of the Act due to having been convicted of multiple crimes for which a total sentence of 40 years was imposed.[4] The Director denied the Form I-601 after first determining the Applicant claimed to be married on a nonimmigrant visa application, which was inconsistent with a Form I-130, Petition for Alien Relative, filed on his behalf, and his Form I-485, both of which indicated he had only been married once to his current U.S. citizen spouse, and he was therefore inadmissible under section 212(a)(6)(C)(i) of the Act for fraud and misrepresentation in his nonimmigrant visa proceedings. However, despite finding that the Applicant had falsely claimed a prior marriage on his nonimmigrant visa application, the Director nevertheless also determined that the Applicant did not establish that his current marriage to a U.S. citizen was valid absent evidence of legal termination of the claimed prior marriage and thus did not establish the Applicant's current spouse is a qualifying relative as is required for eligibility for a waiver under section 212(i) of the Act.[5] The Director therefore determined that no purpose would be served in adjudicating the waiver under section 212(h) of the Act because the Applicant would remain inadmissible under section 212(a)(6)(C)(i) of the Act.[6]

On appeal, the Applicant does not dispute that he is inadmissible under section 212(a)(2)(B) of the Act and instead claims the Director erred in not addressing whether he is eligible for a waiver under section 212(h) of the Act. He asserts that he was never previously married and that he did not commit

[3] The Form I-485 remains pending as of the date of this decision.

[4] The record does not reflect that the Form I-601 was submitted in response to a request for evidence or notice of intent to deny or that any such request or notice was issued to the Applicant.

[5] The Form I-130, Petition for Alien Relative, filed on the Applicant's behalf by his U.S citizen spouse remains approved as of the date of this decision.

[6] Despite this determination, the Director additionally concluded that the Applicant had not provided sufficient evidence to establish his U.S. citizen daughter would suffer extreme hardship as required for the waiver under section 212(h) of the Act. The Director did not, however, make an extreme hardship determination as to the claimed U.S. citizen spouse for purposes of that waiver. Instead, as stated, the Director ultimately denied the Form I-601 as a matter of discretion because the Applicant would remain inadmissible under section 212(a)(6)(C)(i) of the Act and did not establish eligibility for a corresponding waiver under section 212(i) of the Act.

fraud or misrepresentation on his nonimmigrant visa application and therefore is not inadmissible under section 212(a)(6)(C)(i) of the Act and does not require a section 212(i) waiver. In support of this assertion, the Applicant provides new evidence regarding his marital status in Colombia. The Applicant also provides new evidence, including updated declarations, medical and financial documentation, and country conditions information for Colombia that relate to the claimed hardship to both his spouse and daughter if he were refused or denied admission, and he asserts that this new evidence, together with the remaining evidence of record, is sufficient to establish the requisite extreme hardship to a qualifying relative for purposes of demonstrating his eligibility for waivers of inadmissibility under section 212(h) and (i).

As an initial matter, we note if an adverse decision will be based on derogatory information of which an applicant is unaware, they must be made aware of that information and be given an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered. 8 C.F.R. § 103.2(b)(16)(i). The record does not reflect that the Director ever issued a request for evidence or a notice of intent to deny, notifying the Applicant of the derogatory information in his nonimmigrant visa application indicating he had falsely claimed a prior marriage in Colombia; that this therefore also rendered him inadmissible on an additional ground for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act; and that the derogatory information regarding a prior marriage further called into question the validity of his current marriage for purposes of establishing a qualifying relative for a section 212(i) waiver of such inadmissibility, absent evidence of termination of the prior marriage. Consequently, the record shows that the Applicant was not given an opportunity to rebut the derogatory evidence in the record or contest the determinations of his inadmissibility under section 212(a)(6)(C)(i) the Act and of his ineligibility for a section 212(i) waiver before the Director's decision was issued. The record on appeal now includes new evidence, as described above, as well as the Applicant's arguments, specifically addressing for the first time the derogatory evidence and the Director's adverse determinations, which were not considered by the Director. Accordingly, we are remanding the matter to the Director to consider the Applicant's arguments and new evidence in the first instance in determining his inadmissibility under section 212(a)(6)(C)(i) of the Act and his eligibility for waivers of his inadmissibility under sections 212(h) and (i) of the Act.

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