In Re: 26982584 Date: July 19, 2023

Appeal of Boston, Massachusetts Field Office Decision

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

The Applicant, a native and citizen of Nigeria currently residing in the United States, has applied to adjust status to that of a lawful permanent resident. A foreign national 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 was found inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), based on a conviction for a crime involving moral turpitude (CIMT). She seeks a waiver of inadmissibility under section 212(h), 8 U.S.C. § 1182(h), of the Act to adjust status to that of a lawful permanent resident in the United States.

The Director of the Boston, Massachusetts Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application). The Director concluded that the Applicant was inadmissible for having been convicted of a CIMT. The Director then found that the Applicant had neither established rehabilitation nor established extreme hardship to her qualifying relative spouse. 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.

LAW

A 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)(i) of the Act. Individuals found inadmissible under section 212(a)(2)(A)(i) of the Act may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. 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 discretionary 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 of the noncitizen applicant. Section 212(h)(1)(B) of the Act.

A determination of whether denial of the waiver would 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).

In either case, demonstrating rehabilitation or demonstrating extreme hardship, the Applicant must show that the waiver should be granted as a matter of discretion, with favorable factors outweighing the unfavorable factors. Section 212(h) of the Act.

ANALYSIS

On appeal, the Applicant raises four issues. First, the Applicant asserts U.S. Citizenship and Immigration Services (USCIS) should have issued a notice of intent to deny (NOID) prior to denying the hardship waiver. Second, the Applicant states that she met her burden to demonstrate rehabilitation. Third, the Applicant argues that the Director erred in "ignoring or disregarding" extreme hardship on her three adult U.S citizen sons and failing to aggregate the hardship of these children and her U.S. citizen husband, a total of four qualifying relatives. Finally, the Applicant presents additional country conditions evidence which she alleges helps her meet her burden to establish extreme hardship on her qualifying relatives.

A. Inadmissibility

The record reflects that in 2009 the Applicant was convicted of false statements in violation of 18 U.S.C. § 1001(a)(2) and theft of public money in violation of 18 U.S.C. § 641. The Applicant was sentenced to six months home detention, three years of probation, ordered to pay restitution of more than $68,000, and other stipulations by the court. The Applicant has not contested the finding of inadmissibility, which is supported by the record.

B. A Notice of Intent to Deny Was Not Required

We begin addressing a procedural issue the Applicant considers to be an error on the Director's part. The Applicant identifies a June 9, 2021, USCIS Policy Alert instructing officers to issue a request for evidence (RFE) or notice of intent to deny (NOID) before denying an application where there is a possibility the filing party can 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. 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 policy alert the Applicant provides on appeal was incorporated into the USCIS Policy Manual at 1 USCIS Policy Manual, E.6, https://www.uscis.gov/policymanual. The USCIS Policy Manual does not support the Applicant's position that the Director was required to issue an RFE or a NOID on the waiver application. It states: "Generally, USCIS issues written notices in the form of an RFE or NOID to request missing initial or additional evidence from benefit requestors. However, USCIS has the discretion to deny a benefit request without issuing an RFE or NOID." See 1 USCIS Policy Manual, supra, E.6(F). The term "generally" doesn't make the issuance of a notice mandatory and the regulations, further explained by the USCIS Policy Manual, provided the Director with the discretion to deny the waiver application without an RFE or NOID. So, while we acknowledge that the USCIS Policy Manual encourages agency officers to issue RFEs and NOIDs, it does not mandate it. The Director's decision not to issue such a notice was not in direct breach of the regulations or USCIS policy as the Applicant contends on appeal.

C. Rehabilitation

Upon de novo review, we conclude that the Applicant does not meet the rehabilitation waiver requirements. As the Director pointed out in the denial decision, the Applicant expressed remorse for her 2009 conviction in her statement submitted in conjunction with the waiver application, however we concur that record shows that the Applicant's fraud began years earlier, prior to 2003. We agree that the Applicant's statement does not take responsibility for the full scope of her actions in furtherance of the criminal false statements and theft during the period preceding her criminal conviction.

In addition, the Applicant does not dispute that she has not completed her court-ordered restitution payments. To determine whether an applicant has established rehabilitation, we examine not only the Applicant's actions during the period of time for which she was required to comply with court-ordered mandates, but also after her successful completion of them. See U.S. v. Knights, 534 U.S. 112, 121 (2001) (recognizing, in the context of probation, that the state has a justified concern that an individual under supervision is "more likely to engage in criminal conduct than an ordinary member of the community"). We further note that an applicant for discretionary relief with a criminal record must ordinarily present evidence of genuine rehabilitation. Matter of Roberts, 20 I&N Dec. 294, 299 (BIA 1991); Matter of Marin, 16 I&N Dec. 581, 588 (BIA 1978). To determine whether an applicant has established rehabilitation, we examine not only the applicant's actions during the period of time for which they were required to comply with court-ordered mandates, but also after their successful completion of them. See U.S. v. Knights, 534 U.S. 112, 120 (2001). Here, the record does not include evidence indicating the Applicant's successful discharge of her restitution—imposed upon her as a part of the sentencing for her conviction—and, without such completion, we are unable to conclude that she is eligible for a waiver based on rehabilitation.

Accordingly, we do not reach the question whether a rehabilitation waiver would be warranted as a matter of discretion. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible.

D. Hardship

The next issue is whether the Applicant has established extreme hardship to her qualifying relatives, a spouse and three adult sons, as required to qualify for a waiver of inadmissibility under section 212(h)(1)(B) of the Act and, if so, whether she merits the waiver as a matter of discretion. As stated above, 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 a qualifying relative 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).

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. See 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/policymanual (providing guidance on the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both 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 contains a clear statement from the Applicant's spouse and three adult sons indicating they intend to remain in the United States if the Applicant's waiver application is denied. The Applicant must therefore establish that if she is denied admission, her spouse and three adult sons, in the aggregate, would experience extreme hardship upon separation.

In support of her waiver request, the Applicant initially submitted affidavits from herself, her spouse, her three sons, letters of support from a friend and from an employer, school records, medical records for her spouse and two of her sons, financial records, and country conditions evidence. We acknowledge that one of the Applicant's sons died in June 2020 under mysterious circumstances and the loss has been difficult for the entire family.

The financial records submitted indicate that the Applicant has not been employed since February 2020, thus her income has not been crucial to support of the household since then. The Director noted $30,000 worth of deposits from August 2020 to October 2020, some from the spouse's employment, some from the Applicant and her spouse's shared accounts, and some from unknown sources. The medical records indicate that the Applicant's spouse has medical issues including "severe left knee pain, right shoulder trauma and cervical spine issues." On appeal, the Applicant's attorney argues that the spouse will not get the same medical care in Nigeria based on evidence in the record, especially additional country conditions evidence introduced on appeal: an article about economic hardship in Nigeria for under 35-year-old persons and two travel similar travel warnings (one from the Department

of State). Certain parts of Nigeria are under "no travel" advisories, while others have the lower "reconsider travel" warning with advice on precautions to take if an individual travels there. We acknowledge this evidence; however, the health care infrastructure and system in Nigeria and economy for under-35 year-olds is not relevant because the Applicant's spouse and three adult sons expressed an intent to remain in the United States.

On appeal, the Applicant argues that:

> USCIS failed to evaluate the hardship that [the Applicant]'s three U.S. citizen sons would suffer. In its decision, USCIS incorrectly states, "Therefore, USCIS determines that your spouse will not suffer extreme hardship if your waiver application is denied. Although USCIS recognizes your spouse may suffer some degree of hardship, the record does not establish this hardship rises to the level of 'extreme' as contemplated by statute and case law."

We agree that the Director's decision failed to articulate that the hardship on the three adult sons must be aggregated with the spouse's hardship. However, upon de novo review of the totality of the hardship, we find that the Applicant does not meet her burden of showing extreme hardship in the aggregate on her qualifying relatives, both her spouse and three sons.

As a preliminary matter, the Director did note the submission of affidavits and school records for the Applicant's sons among considered documents and commented on how the sons' collective hardship impacted the spouse's hardship:

> USCIS notes, your sons are adults. As such, they would not be required to uproot their lives and move to Nigeria; that would be by choice. While you may assist your sons financially, they are of legal age to be able to support themselves.
>
> The affidavits from your sons reflect the same sentiments of the affidavits from you and your spouse, while speaking of your good character. While considered, these add no value in establishing that your spouse would face extreme hardships if you were not granted admission to the U.S.

Upon de novo review, properly aggregating the Applicant's three adult sons' hardship with her spouse's hardship, the totality of the hardship does not reach extreme hardship. We are sympathetic to the Applicant's family's circumstances and acknowledge the evidence in record regarding the Applicant's spouses medical issues and the emotional impact on her spouse and sons if they were separated from her. However, upon de novo review of the evidence as a whole and considering all the evidence in its totality, the record is insufficient to show that the aggregated hardship of separation would be unusual or atypical to the extent that it rises to the level of extreme hardship. As stated above, the Applicant's spouse and sons have clearly articulated their intent to remain in the United States and separate from the Applicant were she denied admission. The Applicant's spouse's medical issues are controlled and do not impact his ability to work or otherwise function day-to-day and, as stated by the Director, the Applicant's sons are adults and there is insufficient evidence in the record to indicate that they are dependent on her, financially or otherwise. Here, the record fails to demonstrate that the Applicant's spouse and three adult sons would suffer hardship beyond that normally expected upon separation from the Applicant.

III. CONCLUSION

The burden of establishing eligibility lies with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review of the record in its entirety, we agree with the Director that the Applicant has not sustained that burden. Accordingly, the waiver application remains denied.

ORDER: The appeal is dismissed.