U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22261244

Date: AUG. 23, 2022

Appeal of Houston, Texas Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Nigeria, seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for fraud or misrepresentation. The Director of the Houston, Texas Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant did not establish that his only qualifying relative, his U.S. citizen spouse, would experience extreme hardship because of his continued inadmissibility. The matter is now before us on appeal. On appeal, the Applicant submits evidence and a brief asserting his eligibility. The Administrative Appeals Office reviews 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 remand the matter to the Director for the entry of a new decision.

I. LAW

Any foreign national 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. There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the foreign national. If the foreign national demonstrates the existence of the required hardship, then they must also show that U.S. Citizenship and Immigration Services 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).

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation and he does not contest that finding on appeal.[1] The issue on appeal is whether the Applicant has established extreme hardship to his U.S. citizen spouse. We find that the record establishes that the Applicant's spouse would experience extreme hardship due to his continued inadmissibility. Our decision is based on a review of the record, which includes, but is not limited to, statements from the Applicant and his spouse, photographs, financial records, his spouse's medical records and psychological evaluation, and information on conditions in Nigeria.

An applicant may show extreme hardship to a qualifying relative 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 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* 9 *USCIS Policy Manual* B 4(B), https://www.uscis.gov/policymanual (explaining, as guidance, establishing extreme hardship upon separation or relocation). On appeal, the Applicant's spouse states that she would remain in the United States if the waiver application remains denied. Therefore, the Applicant must establish that if he is denied admission, his spouse would experience extreme hardship upon separation.

The Applicant asserts that his spouse would experience emotional, psychological, financial, and medical hardship upon remaining in the United States without him. The Applicant's spouse states that the Applicant is her only source of emotional support, and she is experiencing symptoms of depression and anxiety. The Applicant's spouse states that her six-year-old daughter from a previous relationship is attached to the Applicant, and he helps care for her. The Applicant details his positive interaction with his spouse's daughter and that he has been in her life for several years. The record includes

[1] The Applicant listed himself as married to B-A- (we use initials to protect the identity of individuals) in Nigeria in a [redacted] 2017 B-2 nonimmigrant visa application. However, the Applicant has provided inconsistent information about his relationship to B-A-. In an interview related to the Applicant's July 2019 Form I-485, Application to Register Permanent Residence or Adjust Status, he first stated that he was never married in Nigeria, then said was casually dating B-A-, and finally stated he was engaged to B-A- and planned on marrying her. The Applicant subsequently provided an affidavit from B-A-'s father claiming that they had a customary marriage in Nigeria prior to his nonimmigrant visa application. The Applicant also provided a death certificate for B-A-. Based on the inconsistencies in the record, the Applicant has not established by a preponderance of the evidence that he was married to B-A-. Therefore, the record reflects that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresenting a material fact, his marital status, in his nonimmigrant visa application.

The Director determined that the Applicant was married in Nigeria to B-A-, and therefore misrepresented himself in his Form I-485 interview by not disclosing this marriage. However, if the Applicant established he was married in Nigeria to B-A-, which we have determined he has not, then his misrepresentation of his prior marriages at his Form I-485 interview would not have been material as his underlying Form I-130, Petition for Alien Relative, was still approved based on the "true" facts.

several photographs of the Applicant with his spouse and her child at various events and gatherings. The record also includes a psychological evaluation for the Applicant's spouse which details her unstable family upbringing and reflects that she is experiencing symptoms of depression and anxiety, especially in light of the prospect of not having a stable family due to separation from the Applicant.

Next, the Applicant's spouse mentions that she has polycystic ovarian syndrome and due to this condition, she had miscarriages in 2019 and 2021. She also details her other medical issues, including severe allergies and lower back pain due to an accident in 2009, and her reliance on the Applicant to help with housecleaning and heavy lifting as a result. The record includes evidence of her most recent miscarriage, various medical bills, and accident in 2009.

Lastly, the Applicant's spouse states that she had large hospital expenses from her miscarriages and withdrew money from her 401k to help pay for her medical expenses, she has a mortgage payment, and she would be unable to meet her monthly financial obligations without the Applicant. She states that he covers many of their home expenses and it would be difficult for him to find employment in Nigeria. The Applicant's two 2021 Form W-2s reflect an income of about $63,000 and his spouse's Form W-2 shows an income of $48,555. The Applicant has provided evidence of his spouse's daily expenses, including her mortgage and credit card obligations, and that she has withdrawn money from her 401k. The record includes evidence of conditions in Nigeria, including a high unemployment rate and poor economic conditions.

The record reflects that the Applicant's spouse would experience emotional hardship upon separation from the Applicant and the loss of his support in caring for her daughter, who has a close relationship with him. Furthermore, the Applicant's spouse would experience hardship without the support the Applicant provides regarding her medical issues. Finally, the record establishes that the Applicant earns more than half of the family income, his spouse would experience financial hardship without him, and he would be unable to earn a similar income in Nigeria. Based on the totality of the evidence, we find that the Applicant's spouse would experience extreme hardship upon separation from the Applicant.

As the Director did not make a discretionary finding, we will remand the matter for determination of whether the Applicant also merits a waiver in the exercise of discretion.

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