U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22222468

Date: AUG. 26, 2022

Appeal of Oakland Park, Florida Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Colombia, 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 Oakland Park, Florida 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 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 sought to procure admission to the United States on [redacted] 2002, by presenting an altered Colombian passport belonging to another individual. Therefore, the Director correctly found the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act due to fraud or misrepresentation. The Applicant does not contest the Director's inadmissibility finding on appeal.

The Applicant seeks a waiver of this inadmissibility under section 212(i) of the Act and asserts that he established extreme hardship to his spouse. 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 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 (providing guidance on establishing hardship in the event of relocation or separation). In the present case, the record does not include a statement from the Applicant's spouse indicating whether she will remain in the United States or relocate to Colombia 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 if she remains in the United States or relocates to Colombia.

In relation to hardship the Applicant's spouse would experience, the Director addressed her statement, statements from family and friends, medical and psychological records, financial records, and information on Colombia. The Director determined that the Applicant's spouse would not experience extreme hardship if the Applicant were removed to Colombia.

On appeal, the Applicant submits a brief and material evidence, including his medical records, updated medical records for his spouse, updated psychological records for his spouse, a 2020 tax return, and updated information on conditions in Colombia.

Considering the Applicant's brief and new evidence submitted on appeal, we find it appropriate to remand the matter for the Director to determine if the Applicant has established that his spouse would experience extreme hardship based on the aggregate of her individual factors. If the Director finds that the Applicant has established extreme hardship to his U.S. citizen spouse, then the Director must consider whether he merits a favorable exercise of discretion by addressing and weighing his favorable and unfavorable factors.

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