U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23395939

Date: DEC. 7, 2022

Appeal of San Fernando Valley, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident (LPR) and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for committing fraud. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The San Fernando Valley, California Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility. The Director concluded the Applicant did not establish extreme hardship to their U.S. citizen spouse, their only qualifying relative.

On appeal, the Applicant submits a brief and additional evidence advancing their eligibility claims. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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

A 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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility ground 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. Section 212(i) of the Act. If the foreign national demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

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 foreign national 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 foreign national 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).

II. ANALYSIS

The only issue on appeal is whether the Applicant has demonstrated their spouse (A-) would suffer extreme hardship upon denial of the waiver application.[1] The Applicant obtained a B-2 visitor visa under a false name and entered the United States with that visa in 1999. The Applicant filed a waiver application and the Director denied that filing together with her application to adjust status to that of an LPR. The waiver application is now before us on appeal. Within that appeal, the Applicant asserts additional arguments relating to A-'s mental and physical health and how those should contribute to the extreme hardship claims. She also offers additional materials relating to the couple's financial situation, A-'s medical situation, his personal character, and country conditions for Honduras.

We begin discussing A-'s mental health and medical claims. In the appeal brief, the Applicant takes issue with a precedent decision the Director cited to in the denial decision; *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998). The Director cited to this decision when discussing A-'s psychological evaluation because the Applicant did not offer evidence to adequately support the clinician's statements within the document. The Applicant notes this precedent decision relates to a topic that contains no nexus to a waiver application and that the citation was not appropriate. Even if we were to agree that the citation was not applicable, the Applicant's appeal does not sufficiently address the reason the Director cited the precedent; the evaluation itself and the record are not adequately developed to support some of the evaluation's contents. That finding does not require the Director to cite to any particular precedent as it also falls under the Applicant's burden of proof.

On the issue of the Applicant's psychological well-being, the clinician's account of the evaluation's results showed A- meets the criteria for Major Depressive Disorder and Generalized Anxiety Disorder. The evaluation also offers multiple conclusory statements pertaining to limitations of A-'s day-to-day functioning and offers some insight into the frequency of some symptoms, but it didn't go into detail regarding the severity of his experiences or how they affect A-'s ability to perform daily tasks, including his employment.

The Director specifically noted that the Applicant did not establish what treatment, if any, A- is receiving to mitigate his mental health conditions or how the Applicant provides assistance. And they have not addressed this on appeal other than to indicate that the Applicant cooks for A- and ensures he timely takes his medications. This leaves the record absent of sufficiently probative evidence

[1] We use initials to protect individuals' identities.

demonstrating that A- has any physical or mental impairment that significantly affects his daily life or his ability to work or carry out other activities.

Probative evidence is the type that "must tend to prove or disprove an issue that is material to the determination of the case." *Matter of E-F-N-*, 28 I&N Dec. 591, 593 (BIA 2022) (quoting *Matter of Ruzku*, 26 I&N Dec. 731, 733 (BIA 2016)); *see also* Evidence, *Black's Law Dictionary* (11th ed. 2019). Therefore, if some form of the Applicant's evidence does not adequately prove their contention, then it is not considered to be probative. When combined with other favorable material, evidence that is not probative on its own could exist on a palette in which the Applicant "paints a mosaic" that sufficiently demonstrates the Petitioner's claims. We observe a lack of such other favorable material in this case.

The clinician recommended the following: (1) that the Applicant remains in the United States with A-; (2) that A- continue his medical treatment for his diabetes; and (3) if his psychological symptoms do not abate once the Applicant's immigration situation is resolved, the clinician recommended he access therapeutic treatment from a therapist or a psychologist. As it relates to item (2), it is unclear A- is actually seeking and receiving regular medical treatment for diabetes. A-'s declaration they submit on appeal reflects recurring instances in which A- was warned by doctors about his diabetic condition and the importance of following their recommendations, but he has not taken responsibility to personally implement their instructions. For instance, instead of following his medical doctor's advice, he has not ensured he takes his medications.

Regarding item (3), it is unclear why the clinician only indicated that A- should seek mental health treatment if the Applicant's situation is not resolved in her favor, and whey the clinician didn't recommend that he should now seek treatment for his psychological maladies. Although we do not agree with all of the Director's reasons for ascribing the evaluation with diminished evidentiary value, some were relevant, and our additional reasons listed above offer further support that the evaluation should carry less weight.

While we acknowledge the psychological assessment provides a perspective of A-'s sympathetic situation, it leaves too many questions unanswered. This tends to undercut the level of persuasiveness the psychological assessment exerts. Although we acknowledge that a A-'s mental health situation may be weighed heavily when making an extreme hardship determination, the evidence here does not support the clinician's statements as it relates to his day-to-day functioning.

As it relates to A-'s financial situation, on appeal he explains that he is unsure why his previous attorney indicated that he depends on the Applicant for full financial support because that is not accurate. He indicates that both he and the Applicant contribute financially, but that he does depend on her income to "make ends meet." And as far as assistance from a support group, A-'s mother, sister, and son live just minutes away and these close family ties can provide him with much of the assistance necessary to assuage the negative effects of the Applicant's absence if she were removed from the United States.

Although on appeal the Applicant presented additional materials relating to the couple's financial situation, medical situation, A-'s personal character, and country conditions reports, neither the brief nor A-'s statement explain exactly how most of that documentation contributes to her claims on appeal,

and she did not describe an error the Director committed as it relates to those areas. We agree with the Director that even considering the Applicant's extreme hardship claims in the aggregate, she has not established that A- will experience the level of hardship required for this waiver application.

III. CONCLUSION

In short, the record does not establish extreme hardship to the Applicant's U.S. citizen spouse upon separation from her or relocation with her in the event she is refused admission. This is what is required to establish eligibility for a section 212(i) waiver. As the Applicant has not demonstrated the requisite extreme hardship, no purpose would be served in determining whether she merits the waiver as a matter of discretion. Based on our determinations above, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and she has not demonstrated she warrants a waiver of that inadmissibility ground. As a result, the waiver application remains denied.

ORDER: The appeal is dismissed.