U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23497682

Date: DEC. 8, 2022

Appeal of New York, New York 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 and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The Director of the New York, New York Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant did not have a qualifying relative that would experience extreme hardship if he were denied the waiver. On appeal, the Applicant contends the Director did not provide any supporting statutory or case law authority when denying the application. Further, the Applicant reiterated that his deceased mother is his qualifying relative.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This office reviews the questions in this matter *de novo*. *See 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.

I. LAW

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, 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 waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. If the noncitizen demonstrates the existence of the required hardship, then they must also show that USCIS 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).

Section 204(l) of the Act, 8 U.S.C. § 1154(l), provides that an applicant who immediately prior to the death of a qualifying relative was the beneficiary of a pending or approved petition for classification as an immediate relative, who resided in the United States at the time of the death of the qualifying relative, and who continues to reside in the United States shall have their application for adjustment of status based upon a family relationship, and any related applications, adjudicated notwithstanding the death of the qualifying relative, unless a discretionary determination is made that approval would not be in the public interest.

II. ANALYSIS

The Applicant does not contest the finding of inadmissibility, which is supported by the record. The issue on appeal therefore is whether the Applicant meets the requirements of section 204(l) of the Act, which permits approval of a waiver despite the death of a qualifying relative, since the Applicant's mother, the only qualifying relative, is deceased.

As outlined by the Applicant on appeal, section 204(l) of the Act, which affects not only visa petitions, but also adjustment applications and any related application, such as the Form I-601, provides U.S. Citizenship and Immigration Services (USCIS) with discretion to grant a waiver or other form of relief from inadmissibility to a qualifying applicant, even if the qualifying relationship that would have supported the waiver has ended through death. *See* 7 *USCIS Policy Manual* A.9(B)(1), https://www.uscis.gov/policymanual. Moreover, it is not necessary for the waiver or other relief application to have been pending when the qualifying relative died. *Id.*

More specifically, a waiver or other relief application may be approved despite the death of the qualifying relative if: (1) a petition or adjustment application was pending or approved when the qualifying relative died and (2) the applicant meets the residency requirement (continually residing in the United States at the time of his or her relative's death). Section 204(l) of the Act. Notably, if the qualifying relative who died is the same qualifying relative to whom extreme hardship must be established in order to grant a waiver, USCIS treats the qualifying relative's death as the functional equivalent of a finding of extreme hardship. *See* 7 *USCIS Policy Manual, supra,* at A.9(B)(1). However, for this to apply, the deceased relative must have been a U.S. citizen or LPR at the time of death. *Id.*

Here, in January 1995, the Applicant's mother, a lawful permanent resident, filed a Form I-130, Immigrant Petition for Alien Relative, on behalf of the Applicant. The Applicant submitted the approval notice for his Form I-130 with his waiver application. This Form I-130 petition was approved in January 2003 and the Applicant's mother died in January 2010. In July 2002, the Applicant filed his adjustment application, and it was denied in 2006. In 2021, the Applicant's U.S. citizen son filed

a Form I-130 on behalf of the Applicant. At the same time, the Applicant filed an adjustment application and a waiver application. With these applications he claims to have been residing in the United States continuously since May 1989.

In the Director's decision, he solely noted that the Applicant did not indicate a qualifying relative that would experience extreme hardship but did not provide any explanation. However, the Applicant claims that his deceased mother is his qualifying relative. USCIS must determine whether section 204(l) of the Act applies to his case and, if so, whether he merits this discretionary relief. The current record does not show that the Director conducted that analysis. Thus, we are remanding the matter for the Director to review whether section 204(l) applies to the Applicant's case and, if so, to decide whether he is eligible for a waiver. The Director may request any additional evidence considered pertinent to the new determination and any other issues. We express no opinion regarding the ultimate resolution of this case on remand.

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