U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23925447

Date: DEC. 14, 2022

Appeal of Denver 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 Denver 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 her U.S. citizen spouse.

On appeal, the Applicant submits a brief and additional evidence advancing her 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.

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. 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).

After 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).

When the Applicant filed for a nonimmigrant visa in 2016, she provided information that was false relating to her children and where they lived, as well as the state of her relationship with her previous spouse and her claims that she and her previous spouse worked together. This false information tended to cut off the consular officer's line of inquiry because if she had properly represented the true facts, it could have led the officer down a different line of questioning about the Applicant's personal situation in her home country relating to the likelihood that she was an intending immigrant.

False information is material to a claim if either the foreign national is inadmissible on the true facts, or the falseness tends to shut off a line of inquiry which is relevant to their admissibility, and that would predictably have disclosed other facts relevant to their eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-*, 27 I&N Dec. 105, 114–15 (BIA 2017). The Applicant made at least two entries into the United States with that nonimmigrant visa; one in December 2016 and one in October 2017. The issues raised on appeal are whether the Applicant is inadmissible for committing fraud in obtaining their nonimmigrant visitor's visa and whether they have demonstrated their spouse (A-)[1], as their only qualifying relative, would suffer extreme hardship upon denial of the waiver application.

The Applicant presents essentially the same argument on appeal that she offered to the Director contesting the finding that she was inadmissible for committing fraud when applying for her nonimmigrant visa. The Director dedicated a full page of analysis informing the Applicant why her actions during the nonimmigrant visa application process amounted to fraud under the Act. We incorporate that analysis here by reference, and we agree with the Director on this issue. We are therefore, not persuaded by the Applicant's claims that she should not be considered inadmissible under section 212(a)(6)(C)(i).

The Applicant must demonstrate that denial of the waiver application would result in extreme hardship to their qualifying relative or relatives, in this case her U.S. citizen spouse. An applicant may show extreme hardship under two scenarios: (1) if the qualifying relative remains in the United States separated from the Applicant, and (2) if the qualifying relative relocates with the Applicant to a foreign country. 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. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual.

In this case, the record does not establish whether the Applicant's spouse intends to remain in the United States or relocate to Ethiopia with the Applicant if the waiver application is denied. We note

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

that both the Applicant and A- hypothetically describe the hardships he would endure if she were denied admission as an LPR. However, this does not adequately express A-'s intent of which scenario he expects to engage. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

We begin with the Applicant's claims that A- would experience extreme hardship upon their separation. The claims primarily relate to A-'s medical condition. The Director's general analysis relating to separation reflected that A- is not wholly reliant on the Applicant's income, the Applicant is not financially responsible for A-, and his claims of medical hardship did not go beyond the expected difficulties of family separation. On appeal, the Applicant presents a new statement and other evidence to include a new medical letter relating to A-. Within the appeal the Applicant disagrees with the Director's determination and claims that she demonstrated her spouse would experience extreme hardship.

The Applicant's statement on appeal revisits much of her claims she presented before the Director, but she does not describe the manner in which the Director might have erred in their denial decision. Simply disagreeing with the Director's decision and presenting similar arguments is generally not a sufficient basis upon which to file an appeal. Instead, the Applicant should explain and demonstrate how the Director came to the wrong conclusion and describe why the adverse decision was incorrect. Within an appeal, it should be clear whether the alleged impropriety in the decision lies with the interpretation of the facts or the application of legal standards. Where a question of law is presented, supporting authority should be included, and where the dispute is on the facts, there should be a discussion of the particular details contested. *Matter of Valencia*, 19 I&N Dec. 354, 355 (BIA 1986); *see also Matter of Keyte*, 20 I&N Dec. 158, 159 (BIA 1990). Here, the Applicant has not shown how the Director erred.

In the Applicant's absence upon her separation from the United States, both she and her spouse claim that he will be forced to take care of his own medical needs, to include taking medications, doctor's visits, and his meal preparation. A- indicates that the Applicant helps and supports him with his health needs, she helps prepare his diabetic diet, and he is unable to perform these functions because he works full time. Aside from an instance in which A- experiences a low blood sugar incident and he does not take steps to mitigate its effects, the record does not demonstrate that A- is unable to perform these daily functions due to a physical or mental condition.

The new medical documentation submitted on appeal reiterates that he has hypertension, type 2 diabetes, and two cardiovascular issues. The medical letter from an advanced registered nurse practitioner notes that these are chronic health problems and that A- needs a regular follow up with and monitoring from a primary care provider for his kidney, liver, eyes, nerves, and heart to function properly. However, the new medical documentation submitted on appeal does not offer new details over those the Applicant presented before the Director that were inadequate. Within the appeal, the Applicant has not offered sufficient claims or evidence to establish that without her presence in the United States, A- will experience the requisite level of hardship to warrant the approval of this waiver application, not even considering the separation hardship claims in the aggregate. The Applicant has not shown the types of hardship A- will experience are those that exceed what is usual or expected. *See Pilch*, 21 I&N Dec. at 630–31.

As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to her spouse both upon separation and relocation to Ethiopia. As the Applicant has not established extreme hardship to her spouse in the event of separation, we cannot conclude she has met this requirement. Because the Applicant has not demonstrated extreme hardship to a qualifying relative if she is denied admission, it is unnecessary that we consider whether she merits a waiver in the exercise of discretion. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.