U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23435024

Date: DEC. 15, 2022

Appeal of Tampa, Florida 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 Tampa, 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 U.S. citizen spouse, the only qualifying relative, would experience extreme hardship if he were denied the waiver. On appeal, the Applicant submits a brief and new evidence and asserts that his spouse would experience extreme hardship due to his inadmissibility.

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 dismiss the appeal.

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).

II. ANALYSIS

The Applicant does not contest the finding of inadmissibility, which is supported by the record. The issues on appeal therefore are whether the Applicant has established extreme hardship to a qualifying relative and whether he merits a favorable exercise of discretion. Upon consideration of the entire record, including the arguments made on appeal, we conclude that the Applicant has not established that his U.S. citizen spouse would experience the requisite extreme hardship.[1]

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case his U.S. citizen 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. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (providing, as guidance, the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both scenarios is not required if an applicant's evidence establishes that one of these scenarios would result from the denial of the waiver. *See id.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002)). 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 id.* The Applicant briefly discussed how his spouse would experience extreme hardship both upon separation and relocation. In the present case, the evidence of record does not indicate whether the Applicant's spouse intends to remain in the United States or relocate with the Applicant to Romania if the waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

Documentation submitted with the waiver application includes but is not limited to a statement from the Applicant and the Applicant's U.S. citizen spouse. The Applicant contends that his qualifying relative would experience extreme emotional and financial hardship because of his continued inadmissibility.

Regarding separation, the Applicant's spouse contends that she will experience financial and emotional hardship were she to remain in the United States while the Applicant relocates abroad. In the statement by the Applicant's spouse, she indicated that she mentally and emotionally needs her husband since she was previously in an abusive relationship and the Applicant now provides her security and love. She also stated that her job is seasonal and commission-based, and she cannot afford her current lifestyle without the Applicant's assistance. She further indicated that she suffers from

[1] While we may not discuss every document submitted, we have reviewed and considered each one.

depression and anxiety and pain in her back, neck, and shoulder from stress. The Applicant's spouse also indicated that she could not relocate to Romania because she will not find gainful employment since she does not speak the language.

On appeal, the Applicant explains that he is currently in Romania to care for his sick father and his spouse is suffering extreme and unusual hardship from the separation. He also states that his spouse will not relocate to Romania due to COVID-19 and since she does not speak the language. He said he loves her and does not want to be separated from her. The Applicant's spouse submits a new statement where she explains that she moved to California and is struggling financially without the help of the Applicant and since she is sending the Applicant money while he is residing abroad. She also said she suffers from depression and anxiety due to her husband's absence but cannot afford a therapist.

On appeal, the Applicant submits photocopies of wire transfers from the United States; a copy of his spouse's Form W-2, Wage and Tax Statement for 2021 indicating that she earned $52,419.16; and a statement that the spouse's monthly rent is $2,334.41.

Regarding the claim that the Applicant's spouse is suffering from depression and anxiety due to the Applicant living abroad, the Applicant did not submit any corroborating documentation of his spouse's mental health struggles. While we do not minimize the spouse's claim of her depression and anxiety, the record does not show that the Applicant's spouse's situation, or the symptoms she is experiencing, are unique or atypical compared to others in similar circumstances. For example, the record does not show that she has any physical or mental health issues that affect her ability to work or carry out other activities, or that she requires the Applicant's assistance to conduct her daily affairs. The Applicant's spouse did not list any symptoms she suffers and did not address the exact nature and severity of any conditions she may suffer. She also did not describe the specific assistance she needs from the Applicant and therefore we cannot ascertain the severity of her condition or determine the degree to which the Applicant's physical presence is required to manage them.

The Applicant's spouse also stated that she would suffer financial hardship if she relocated to Romania because she does not speak the language and therefore would not find employment. However, the Applicant did not submit any documentation to support this claim. In addition, she said she is suffering financially at home since the Applicant is not providing financial assistance and she is sending him money while he is residing abroad. With respect to financial hardship, the record does not include evidence of the Applicant's income or his financial contributions to his spouse. The record reflects that his spouse has gainful employment in the United States, earning $52,419.16. The Applicant did not submit bank statements or documentation to identify the Applicant's regular income or specific household expenses for which he is responsible. Without specific details about the Applicant's contribution to the household expenses, we are unable to determine what hardship his spouse might experience, if any, without the Applicant's contribution. We acknowledge that the spouse's finances may be negatively impacted by the Applicant's relocation to Romania. However, the record does not indicate that the Applicant would be unable to provide for herself if he were denied admission to the United States.

The evidence in the record is insufficient to establish that the spouse's hardships, considered individually and cumulatively, would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship due to separation from the Applicant. The spouse's statement

does not establish that separation from the Applicant would affect her ability to function in her daily life.

Because the evidence of record does not indicate whether the Applicant's spouse would remain in the United States or relocate with him to Romania if the waiver application is denied, the Applicant was required to establish that denial of the waiver application would result in extreme hardship to a qualifying relative upon both separation and relocation. As he did not establish extreme hardship to his qualifying relative in the event of separation, we cannot conclude he has met this requirement. As such, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. Section 291 of the Act, 8 U.S.C. § 1361. Here, she has not met that burden.

ORDER: The appeal is dismissed.