U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23051977

Date: DEC. 19, 2022

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico, 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 fraud or willful misrepresentation of a material fact.

The Director of the Los Angeles, California Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds, concluding that the record did not establish that the Applicant's qualifying relative, his U.S. citizen spouse, would experience extreme hardship if the Applicant were denied the waiver. The Director also concluded that, even if the Applicant had shown extreme hardship, he would not be entitled to a favorable exercise of discretion. The matter is now before us on appeal.

On appeal, the Applicant contends that his spouse would experience extreme hardship if the waiver were denied. 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

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. This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to the United States citizen or LPR spouse or parent of the noncitizen. 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). In these proceedings, it is the applicant's burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant does not dispute that he is inadmissible under section 212(a)(6)(C)(i) of the Act because he sought to procure admission to the United States by willfully misrepresenting his identity. In [redacted] 1998, the Applicant attempted to enter the United States at the San Ysidro, California Port of Entry, using another individual's Form I-551 Resident Alien Card as identification. An immigration inspector found the Applicant inadmissible due to misrepresentation, and ordered his expedited removal on [redacted] 1998. Shortly after his expedited removal, the Applicant unlawfully reentered the United States without admission and has remained in the United States since then.[1]

The Applicant seeks a waiver of this ground of inadmissibility. The issue on appeal is whether the Applicant has demonstrated that his qualifying relatives, his U.S. citizen spouse whom he married in 1999, would experience extreme hardship upon denial of the waiver. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relatives remain in the United States separated from the applicant and 2) if the qualifying relatives relocate 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 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. *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)). An 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.* In the present case, the record does not contain a statement from the Applicant's spouse indicating whether she intends to remain in the United States or relocate to Mexico if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his qualifying relative would experience extreme hardship both upon separation and relocation.

On appeal, the Applicant asserts that, because he "submitted evidence that both separation and relocation would cause hardship to his wife, both must be considered." The Applicant cites no authority to support this assertion. Because the Applicant has not specified whether his spouse would remain in the United States or relocate with him, he bears the burden of proof to establish extreme hardship under *both* scenarios. Under the case law cited above, if he has not shown extreme hardship under *either* scenario, then he has not met his burden of proof.

The Applicant contends that having to choose between separation and relocation "is itself a situation that causes [the Applicant's spouse] extreme hardship." While the effect on families is a factor to be considered when weighing the question of extreme hardship, when a waiver is denied, every qualifying

[1] The reentry occurred somewhere between April and June 1998; materials in the record differ as to the exact date. But the precise date of his 1998 reentry is not material to the outcome of this proceeding.

relative must make the choice between relocation and separation. Because every qualifying relative must make such a choice, the decision, though painful, is a "common result of deportation" of the type contemplated in *Matter of Pilch*, 21 I&N Dec. at 631.

Below, we will consider whether the Applicant's spouse would experience extreme hardship if she were to remain in the United States, separate from her spouse. On appeal, the Applicant cites a number of Ninth Circuit court cases involving the issue of family separation, but the Applicant does not establish that the facts of the present case are sufficiently similar to those in the cited cases. The cited cases do not indicate that extreme hardship is the presumed result of separation. The burden of proof is on the Applicant to establish eligibility for the waiver. *See* section 291 of the Act, 8 U.S.C. § 1361 (placing the burden of proof on the individual seeking immigration benefits"). *See also Matter of Mendez-Moralez*, 21 I&N Dec. 296, 299 (BIA 1996) (holding that applicants for "discretionary forms of relief" have the burden of showing that favorable exercise of discretion is warranted). *See generally* 9 *USCIS Policy Manual*, *supra*, at B.3(A). The very prospect of family separation does not shift that burden to U.S. Citizenship and Immigration Services.

The Applicant submitted a psychological evaluation co-prepared by an associate clinical social worker and a family therapist, indicating that the Applicant's spouse "has been diagnosed with . . . Generalized Anxiety Disorder," and that denial of the waiver application "may send [her] into a tailspin of emotional disorganization and cognitive disintegration, with the high likelihood of leading to more severe and debilitating anxiety and stress symptoms, including a possible reemergence of suicidal thoughts and ideations."

The Applicant states that "the Field Office failed to consider the psychological harm to" the Applicant's spouse, but the denial notice includes paragraphs of discussion of the psychological evaluation. The Director acknowledged the Applicant's spouse's diagnosis of generalized anxiety disorder, but concluded that the record does not support the level of severity that the Applicant has claimed. The Applicant, on appeal, cites case law and unpublished appellate decisions concerning individuals who had different diagnoses than the Applicant's spouse, such as major depressive disorder. The Applicant contends that the Director relied on "assumptions and conjectures rather than the expertise of the evaluating psychologist," which carries "significant weight." The Applicant emphasizes his spouse's "history of suicidal thoughts and ideations is one of the symptoms she suffers." The psychological evaluation, however, specifies that "[s]he does not report to have any present suicidal or homicidal thoughts and ideations," and "is not at risk of hurting herself or others." Rather, the evaluators themselves speculated about "a *possible* reemergence of suicidal thoughts and ideations" which the Applicant's spouse "last . . . thought about . . . in [her] early 20's," more than 30 years before her evaluation at age 55. While we acknowledge the potential significance of this issue, the Director noted this considerable passage of time, a critical point the Applicant does not directly address on appeal.

The evaluation indicates, in general terms, that the Applicant's spouse's generalized anxiety disorder affects her daily life, but offers little specific information apart from diminished appetite and taking longer to fall asleep at night. The evaluation also indicates that, while worries about her spouse's immigration status have worsened her symptoms, she had experienced those symptoms for years beforehand, including during her marriage to the Applicant.

The Applicant's spouse also cited issues with her physical health, stating that she suffers from medical problems with her knee and hands that limit her ability to perform many daily activities, and which cause her to rely that much more on the Applicant's help for help such as carrying groceries into the house. A physician listed the Applicant's spouse's medical conditions including arthritis of the left knee, carpal tunnel syndrome in both hands, and pain in her left hip, but did not describe the impact of these disorders on her daily life or the nature and extent of any treatment. The Applicant's spouse indicated in 2017 that she has "had to go to physical therapy" for "neck and shoulder pains," but the physician's letters from 2017 and 2022 identified no condition relating to those symptoms. In 2022, the Applicant's spouse indicated that she "went for physical therapy for [her] knee" several years earlier. The record does not document the nature or extent of the physical therapy, or establish that the therapy is still ongoing.

The Applicant also submitted statements from friends and neighbors, indicating that the Applicant's spouse frequently helps them with various tasks and errands. In a letter from 2022, the Applicant's spouse stated that she is "in relatively good health," but was concerned that more problems would arise with age.

The Applicant has not submitted sufficient evidence to meet his burden of proof and establish that his absence would cause his spouse extreme hardship owing to her medical problems.

In a June 2007 declaration, the Applicant's spouse stated that she earned about $80,000 per year teaching English as a second language, and the Applicant earned about $70,000 per year working in construction. She stated that the couple's "expenses are almost $8,000 per month," including a $280,000 mortgage, and that she would not be able to meet those expenses in the Applicant's absence. She asserted that she is dependent on the Applicant, both financially and emotionally.

In a 2017 statement, the Applicant's spouse repeated the assertion that she cannot meet household expenses on her own. She added that she would soon "begin working part time only," starting with the 2018-2019 school year, which would cut her income in half. At that time, the Applicant did not submit documentation from his spouse's employer to document this potential change in his spouse's working hours.

The annual amounts shown on IRS Form W-2 Wage and Tax Statements, submitted in 2022, reflect a more modest reduction in the Applicant's spouse's income. The Applicant's income tax returns show that his income is considerably lower than that of his spouse:

	Applicant	Spouse
2017	not submitted	$66,151
2018	not submitted	56,871
2019	$29,595	60,631
2020	30,799	62,774
2021	33,111	58,014

In February 2022, the Applicant submitted a letter from his spouse's employer indicating that she "has taken a reduction in hours and is no longer working the evening assignment which was from 6:15 p.m. – 9:00 p.m. since August 2021." The 2022 letter did not specify her remaining hours or compensation,

or state whether the reduced work schedule was voluntary. The Applicant's spouse stated that she "took a reduction in hours" because "it has become overwhelming to go back in for the second shift."

The Director noted that copies of bills from 2017 and 2022 show monthly expenses substantially lower than the $8000 claimed in 2007, and concluded that her recent salary information appeared to show sufficient compensation to cover her documented expenses.

The Applicant contends that the Director did not give sufficient consideration to the Applicant's spouse's volunteer work with a cat rescue charity. Third-party letters describing that work did not indicate that the Applicant's spouse had curtailed these activities owing to medical issues. The Applicant's spouse states that she relies on the Applicant to lift and carry heavy items relating to this charitable work, but the record describes other activities that she remains able to perform, such as "driving all over the state" to obtain veterinary care for the animals and fostering many of them until they find permanent homes.

Although we address each specific hardship factor separately, we have considered the issues both individually and in the aggregate. *See Matter of Ige*, 20 I&N Dec. at 882. We conclude, however, that they do not collectively rise above the common results of separation. In summation, considering the record in its entirety, the record does not establish in the aggregate that the hardship the qualifying relative spouse would experience upon the Applicant's inadmissibility would rise above the common result of deportation to the level of extreme hardship. *See id.*

The Applicant must establish by a preponderance of the evidence that denial of the waiver application would result in extreme hardship to a qualifying relative both upon separation and relocation. Section 212(a)(9)(B)(v) of the Act; *Chawathe*, 25 I&N Dec. at 375; *see also* 9 USCIS Policy Manual B.4(B), (providing, as guidance, the scenarios to consider in making extreme hardship determinations). As the Applicant has not established extreme hardship to his spouse in the event of separation, we cannot conclude he has met this requirement.

Because we have concluded that the Applicant has not met his burden of proof regarding extreme hardship to a qualifying relative, we need not address the separate issue of whether he merits a favorable exercise of discretion.

ORDER: The appeal is dismissed.