U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23773029

Date: DEC. 21, 2022

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of China, 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). U.S. Citizenship and Immigration Services (USCIS) may grant the discretionary waiver if refusal of admission would result in extreme hardship to the Applicant's qualifying relative(s).

The Director of the Los Angeles, California Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish the requisite extreme hardship to her spouse, the only qualifying relative in the case. The matter is now before us on appeal.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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

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). This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to the noncitizen's U.S. citizen or lawful permanent resident spouse or parent. Section 212(i) of the Act. A determination of whether refusal of admission would 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). 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).

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 generally* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual/volume-9-part-b-chapter-4. 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 *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012), *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002)). If the applicant demonstrates the existence of the required extreme hardship to a qualifying relative, then the applicant must also show that USCIS should favorably exercise its discretion to grant the waiver application. Section 212(i) of the Act.

II. ANALYSIS

A. Inadmissibility

On appeal, the Applicant requests us to "revisit the determination" that she is inadmissible for fraud and willful misrepresentation. She acknowledges that when her spouse filed a Form I-130, Petition for Alien Relative, on her behalf, she submitted to USCIS a Form I-20 A-B, Certificate of Eligibility for Nonimmigrant (F-1) Student Status – For Academic and Language Students, purportedly issued by the [redacted] Institute to confirm her enrollment at the school. She claims that when she enrolled at the school, she "unfortunately became unwittingly involved in a visa fraud school." She, however, argues the record does not support a finding of fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act, because her actions were "not material" to her adjustment of status application. Thus, she asserts that she does not need to submit a waiver application under section 212(i) of the Act.

The record does not support the Applicant's contention. The Applicant submitted a waiver application, specifying on page 4 of which that she had "sought to procure an immigration benefit by fraud or by concealing or misrepresenting a material fact." In a February 2022 letter, the Applicant, through her then-counsel, stated that she filed the waiver application because she "enrolled in [redacted] Institute from December 2014 to March 2015" and that the "principals of [redacted] Institute[] had pled guilty to student visa fraud." Page 3 of the February 2022 letter provides that she "found an agent who handled foreign student visa services to help her enroll in the [redacted] Institute in [redacted] She later transferred to another school "[a]fter several months without regular classes."

As explained in the April 2022 denial of the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, during a 2019 interview before an immigration officer, the Applicant testified that she "had taken courses at [redacted] Institute from December 2014 until March 2015." The September 2019 Record of Sworn Statement similarly reveals that when asked about her enrollment at the [redacted] Institute, the Applicant claimed that she was a full-time student who physically went to classes, but that she did not remember which day(s) she attended classes. This testimony is inconsistent with information contained in the February 2022 letter, in

which the Applicant stated that while she was a student at the [redacted] Institute, there were "several months without regular classes."

The April 2022 Form I-485 denial decision explains that a federal investigation revealed that the [redacted] Institute was part of a "pay-to-stay" scheme, in which the establishment "charged 'tuition' to maintain F-1 status for students who were not required to attend the school." During the 2019 interview, the Applicant did not disclose to the immigration officer that she had enrolled at a school that did not require her to attend classes regularly or that the school was part of an immigration fraud scheme. Additionally, her testimony to the immigration officer that she was a student who took a full-time course load at the [redacted] Institute was false. As the Applicant was seeking a discretionary benefit of adjustment of status, the nature of her affiliation with a school that engaged in immigration fraud was material to the adjudication of her application.[1] *See generally* 8 *USCIS Policy Manual* J.3(E)(2), https://www.uscis.gov/policy-manual/volume-8-part-j-chapter-3 (noting that a concealment or a misrepresentation is material if it has a natural tendency to influence or was capable of influencing the decisions of the decision-making body); *see also Matters of Valdez*, 27 I&N Dec. 496, 498 (BIA 2018) (noting that misrepresentations are willful if they are deliberately made with knowledge of their falsity). Based on these reasons, the record sufficiently supports a finding that the Applicant is inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act.

B. Extreme Hardship

As the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, to be eligible for adjustment of status, she must seek and be granted a waiver under section 212(i) of the Act. In the waiver application decision, the Director discussed the Applicant's claims that her spouse would suffer extreme hardship if her waiver application were denied and she had to leave the United States, returning to China. The Director noted in the decision that the evidence – including tax documents and materials concerning household income and expenses – did not support a finding that her spouse would be under financial stress upon the Applicant's departure from the United States. The Director further explained that even if her spouse would have to live without her income, the evidence did not show that he would have issues paying "for some of the necessities such as mortgage, insurance, property tax, food, gasoline and utilities bills" because he was employed full-time and operated a trucking business.

Next, the Director discussed the Applicant's spouse's health concerns, acknowledging that he suffered from insomnia, major depressive disorder, as well as anxiety; that he had experienced negative events relating to the death of his sister and a failed prior romantic relationship; and that he used alcohol to self-medicate. The Director, however, observed that he "works 60 to 70 hours per week operating his trucking business" and that his health concerns and past negative experiences did not prevent him from holding full-time employment.

[1] Additionally, the Applicant entered the United States as a nonimmigrant F-1 student and had to maintain her F-1 student status to lawfully remain in the United States. She attempted to maintain her F-1 student status, which constituted a benefit under the Act, by enrolling in and obtaining the Form I-20 A-B from the [redacted] Institute. *See* Section 212(a)(6)(C)(i) of the Act.

The record also included evidence showing that the Applicant's son had been diagnosed with speech and developmental delay and was receiving treatment, and that her spouse's parents experienced medical issues. The Director explained that because these individuals were not qualifying relatives under section 212(i) of the Act, their purported hardship did not establish the Applicant's waiver application eligibility. After considering the totality of the evidence, including documents on the country conditions of China, the Director denied the waiver application, concluding that the Applicant did not establish hardship to her spouse that was over and above the normal disruptions involved in the removal of a family member.

On appeal, the Applicant submits a brief and additional evidence, including updated medical records concerning her spouse's parents, a January 2022 psychological report discussing her spouse's conditions, letters from relatives (including letters from her spouse, her spouse's uncle, brother, and parents), as well as country condition documents regarding China. She argues that the Director "erroneously determined [that her spouse] would not suffer extreme hardship" if she departed the United States. She argues that she qualifies for the waiver based on evidence of her spouse's "strong familial ties to the United States, the positive and essential role he plays in the lives of his family in the United States, the importance of his U.S. based family's well-being to him, the psychological trauma he endures while facing the possibility of separation from his wife, and the lack of any family tie or skills necessary to move to China." The Applicant argues that the Director failed to "consider [her spouse's] commitment to his immediate relatives' well-being and the impact of [her] absence would have on his commitment to them." She claims that she has a role "in supporting [her spouse] to allow him to care for his parents," his niece (whose mother died when she was approximately one year old), and his son. She maintains that "[t]he need [for her spouse] to maintain his career, care for his son as a single parent, while also looking after his elderly parents in declining health and his niece who he helped raise . . . are all relevant factors to consider when evaluating the extreme hardship he would suffer if [she] is not permitted to remain in the United States."

As noted, the sole qualifying relative in this case is the Applicant's spouse. However, the Applicant's spouse may experience hardship that is the result, at least in part, of hardships to other relatives, including his parents, his son and niece. The record, including the letters, indicates that the Applicant's spouse looks after and helps his parents and niece, but the evidence does not specify how many hours per week he spends caring for them, or explain how the Applicant's departure from the U.S. would diminish his ability to care for them to an extent that it would constitute extreme hardship on him. The evidence shows that the Applicant's spouse does not live with his parents and niece, and the medical records do not reveal that he has frequently accompanied his parents to medical appointments. The letters also claim that the Applicant is the primary caretaker of her and her spouse's son and is present during his therapy sessions. The Applicant maintains that upon her departure from the United States, her spouse would have to raise their son, who has developmental and speech delay, as a single parent. The evidence, however, is insufficient to confirm that raising a child with the specified conditions as a single parent constitutes extreme hardship on the Applicant's spouse. The record also lacks information regarding assistance that the Applicant's spouse's family members or other individuals could provide in caring for his son, his parents, and his niece upon the Applicant's departure.

On appeal, the Applicant discusses her spouse's medical concerns, stating that he "needs her by his side in the U.S. and the thought of losing her has caused him severe psychological hardship." She also claims that "he has been prescribed medication to assist with his depression and anxiety, as well as a

sleep-aid to assist with his insomnia." As discussed in the Director's waiver application decision, the Applicant's spouse is gainfully employed and operates a trucking business. He is also the primary breadwinner for the family, and financially supports the Applicant and their son. Although the record indicates that he has experienced medical concerns, it fails to confirm that his conditions have impacted his ability to work and function in his daily life.

Although we acknowledge the challenges the Applicant's spouse will face as a single parent, who has experienced medical issues and who cares for his parents and niece, the record does not show that he has any physical or mental impairment that affects his ability to work or carry out his daily activities. The record shows that the Applicant's spouse has family members living in the United States, including one uncle and a brother. The Applicant has not shown that his family members or other individuals are unable or unwilling to assist him upon her departure from the United States. Even considering all of the evidence in its totality, the record is insufficient to show that the Applicant's spouse's hardship would rise beyond the common results of removal or inadmissibility if he remains in the United States without the Applicant.[2] *See Matter of Pilch*, 21 I&N Dec. at 630-31. Because the Applicant has not demonstrated extreme hardship to a qualifying relative upon the refusal of her admission, we need not consider whether she merits a waiver in the exercise of discretion and, therefore, reserve the issue.[3] The waiver application will remain denied.

ORDER: The appeal is dismissed.

[2] Because the Applicant's spouse has indicated that relocation to China is not an option, we evaluate the record for hardship during separation only.

[3] Our reservation of this issue is not a stipulation that the Applicant overcame this alternate ground of denial and should not be construed as such. Rather, there is no constructive purpose to addressing it because it cannot change the outcome of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").