U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23553389

DATE: DEC. 22, 2021

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico, is the recipient of U-1 nonimmigrant status and an approved Form I-130, Petition for Alien Relative. The Applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).[1]

The Director of the Los Angeles, California Field Office denied the application, concluding that the record did not establish the Applicant would receive consent for readmission after a finding of inadmissibility under 212(a)(9)(C)(i) (I) and (II) of the Act and as a result, no purpose would be served in approving the Form I-601. On appeal, the Applicant argues that the Director erroneously denied the application based upon the conclusion that inadmissibility under 212(a)(9)(C)(i) (I) and (II) of the Act cannot be waived by filing a Form I-601, Application for Waiver of Grounds of Inadmissibility.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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 discretionary 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. 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

[1] The record reflects that U.S. Citizenship and Immigration Services (USCIS) approved the Applicant's Form I-918, Petition for U Nonimmigrant Status and her Form I-192, Application for Advance Permission to Enter as Nonimmigrant [Pursuant to Section 212(d)(3)(A)(ii) of the INA] on January 4, 2022.

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 entered the United States without inspection around 1990 and remained in the United States until her departure in March 2000. The Applicant then attempted to reenter the United States in [redacted] 2000, using a border crossing card not lawfully issued to her. When questioned regarding the border crossing card, the Applicant misrepresented her identity by providing an assumed name. Border officials expeditiously removed the Applicant from the United States in [redacted] 2000. Subsequent to her expedited removal, the Applicant reentered the United States without inspection, admission, or parole and has remained in the United States since that time. As such, the Applicant sought to procure admission into the United States by fraud or willfully misrepresenting a material fact and is therefore inadmissible. The Applicant does not contest this finding.

She filed a Form I-601, Application for Waiver of Grounds of Inadmissibility in March 2011. At the time of filing the Form I-601, the Applicant had a pending Form I-485, Application to Register Permanent Residence or Adjust Status. As stated, the Applicant is also the beneficiary of an approved Form I-130, Petition for Alien Relative, which her spouse filed on her behalf. The approved Form I-130 retained a priority date of March 7, 2006.

The Director denied the Form I-601 in March 2012, concluding that no purpose would be served in approving it because U.S. Citizenship and Immigration Services (USCIS) found the Applicant inadmissible under sections 212(a)(9)(C)(i)(I) and (II) of the Act. These sections refer to noncitizens who have: (I) been unlawfully present in the United States for an aggregate period of more than 1 year; or (II) been ordered removed and enter or attempt to reenter the United States without being admitted. In his decision regarding the Form I-601, the Director explained that the Applicant's violations under sections 212(a)(9)(B) and 212(a)(6)(C) of the Act require a Form I-601 but that the violations of 212(a)(9)(C)(i)(I) and (II) require consent for readmission to the United States prior to reentry after expedited removal. At the time of filing the Form I-601, the Applicant had not provided evidence of consent to apply for admission. In addition, the Applicant did not establish that she qualified for the exception under section 212(a)(9)(C)(ii) of the Act or a waiver of the inadmissibility under 212(a)(9)(C)(iii) of the Act.[2]

The decision also stated that the Applicant's inadmissibility under 212(a)(9)(B) of the Act also requires an approved Form I-601; however, we need not address this inadmissibility in adjudicating the instant appeal, as the Applicant has not made an argument on appeal relating to that ground. The Applicant, however, remains inadmissible under 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for fraud or misrepresentation. The Director denied the waiver application for the

[2] The exception under section 212(a)(9)(C)(ii) refers to those individuals who seek admission more than ten years after the date of last departure from the United States and prior to their reembarkation, receive consent from the Secretary of Homeland Security to apply for admission. The waiver at 212(a)(9)(C)(iii) of the Act applies only to VAWA self-petitioners.

reasons described above and did not reach the merits of her application. Accordingly, the issue on appeal is whether the Applicant has demonstrated that her U.S. citizen spouse would suffer extreme hardship upon denial of the waiver.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case, her U.S. citizen husband. 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. 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. 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 generally, 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/policymanual.

In the present case, the record does not contain a statement from the Applicant's spouse indicating whether he 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 she is denied admission, her qualifying relative would experience extreme hardship both upon separation and relocation.

Documentation submitted with the waiver application includes a statement from the Applicant, the Applicant's spouse, and the Applicant's adult LPR son, along with copies of the relevant marriage certificate, birth certificates, and other civil documentation. In addition, we reviewed the family's 2007-2009 tax documentation previously provided to accompany the Form I-864, Affidavit of Support, filed with her adjustment of status application.

The Applicant provided very little documentation in support of her waiver application and did not make any specific assertions regarding hardship to her qualifying relative spouse. We reviewed the statement from the qualifying relative; he described the obstacles he and his wife have faced together, as well as his love and respect for the Applicant. He also stated that, "I am at this moment suffering from a high blood pressure and I am afraid that if something bad happened to my wife she gets separated from me, I may die without her by my side" (all capital letters removed).

The Form I-290B stated that a brief and/or additional evidence would be filed with the AAO within 30 days; however, we have not received any brief or additional evidence. Accordingly, we use only the Applicant's statement on the Form I-290B itself as the basis for the appeal. As previously noted, the Applicant contends that the Director erroneously denied the application based upon the conclusion that inadmissibility under 212(a)(9)(C)(i) (I) and (II) of the Act cannot be waived by filing a Form I-601. Although the Applicant has not submitted any additional evidence or arguments in support of her appeal, the reasons for which the Director denied the Form I-601 have significantly changed since she filed the appeal. Namely, the Petitioner's inadmissibility under sections 212(a)(9)(C)(i) (I) and (II) were waived under section 212(d)(14) of the Act.[3]

[3] The waiver at 212(d)(14) provides that the Secretary of Homeland Security may waive the application of most inadmissibilities for individuals with nonimmigrant U status if the Secretary of Homeland Security considers it to be in the public or national interest to do so.

In examining the merits of her waiver application, we note the Applicant contended that she herself would experience extreme hardship if she were separated from her family in the United States. While we understand and are sympathetic to the difficulties she has faced, her own hardship is not a relevant consideration in the adjudication of the Form I-601. Similarly, the Applicant asserted that her children would also suffer upon separation. However, we may consider the hardship to the Applicant's children only as it affects her qualifying relative spouse. See 9 USCIS Policy Manual, supra, at B.4(D)(2). The Applicant did not provide any evidence of the qualifying relative's blood pressure or how it amounts to extreme hardship. In other words, the record, as it presently stands, provides little to no basis upon which we could even consider the issue of her husband's extreme hardship, let alone make a determination in the Applicant's favor.

Although we recognize that the Applicant's spouse may face some hardships upon separation, based upon the record as currently constructed, we cannot conclude that when considered in the aggregate, the hardship would go beyond the common results of separation from a loved one and rise to the level of extreme hardship. The Applicant must establish that denial of the waiver application would result in extreme hardship to a qualifying relative both upon separation and relocation. As the Applicant has not established extreme hardship to her spouse in either scenario, the Director's decision to deny the Form I-160 will be affirmed, albeit for different reasons.

The evidence submitted does not provide the detail and specificity necessary to make a finding that the concerns amount to extreme hardship (either individually or cumulatively). Thus, we conclude the Applicant has not established that her spouse's hardships would go beyond the common results of separation or relocation and rise to the level of extreme hardship.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue concerning inadmissibility under 212(a)(9)(B)(i)(II). See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). In addition, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion. The Applicant has the burden of establishing that she is eligible for a waiver of inadmissibility. Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met this burden.

ORDER: The appeal is dismissed.