U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19643908

Date: FEB. 3, 2022

Appeal of Tucson, Arizona, 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 and seeks a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides for a waiver of this inadmissibility if denial of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen.

The Director of the Tucson, Arizona, Field Office denied the application, concluding that the record established that the Applicant was inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact. The Director further concluded that the record did not establish, as required, that denial of admission would result in extreme hardship to the Applicant's qualifying relative, his lawful permanent resident spouse. On appeal, the Applicant asserts that his qualifying relative spouse would experience extreme hardship in the event that the Applicant is not granted a waiver 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

A 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. There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent. Section 212(i) of the Act. If the noncitizen demonstrates the existence of the required hardship, then they must also show that U.S. Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver. *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).

II. ANALYSIS

The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record. The issue on appeal is whether the Applicant's qualifying relative would experience extreme hardship if the waiver is denied. 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 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 waiver is denied. *See id.*

In support of the application, the Applicant submitted a statement from his spouse. Although the Applicant's spouse described hardship she would experience both if she were separated from the Applicant and if she were to relocate with him, on appeal, the Applicant asserts that his qualifying relative spouse "would have no choice but to move to Mexico with [the Applicant] . . . if he were not permitted to remain in the U.S." Accordingly, we limit our analysis to whether the Applicant's spouse would experience extreme hardship upon relocation, not upon separation.[1]

The Applicant's spouse asserted in her statement, "If [the Applicant] is forced to return to Mexico, we will lose our business, home, and won't be able to fulfill our financial obligations and possibly go bankrupt." The Applicant's spouse also asserted that "it would be close to impossible for us to open a new restaurant" in Mexico because "[s]ince the beginning of the pandemic over 100,000 establishments have closed, with a significant percentage unlikely to reopen."[2] The Applicant's spouse further asserted, "If I move to Mexico with [the Applicant], I would have to abandon my legal permanent residency status, and leave the country that I've called home for the last 13 years." The Applicant's spouse also asserted that she is "currently going through a severe depression and anxiety,

[1] On appeal, the Applicant also discusses hardship his adult children would experience if they were to relocate to Mexico. Although we may consider how a qualifying relative's hardship may, in turn, cause hardship to other relatives, our analysis is limited to how a qualifying relative may experience hardship, as established in the record. *See* section 212(i) of the Act. The record here does not establish that the qualifying relative would experience extreme hardship as a result of her relocation.

[2] The Applicant and his spouse co-own a restaurant in the United States. The record contains printouts of news articles published online, summarizing restaurant closures in Mexico.

due to the recent unfortunate events involving my parents [during the COVID-19 pandemic]" and that "[the Applicant's] uncertain immigration situation [has] affected my mental health immensely.[3] I am always in despair, I can't sleep, I have anxiety and frequent panic attacks." The record contains a psychological evaluation of the Applicant's spouse performed by [redacted] a psychologist, dated March 2021, diagnosing her with "generalized anxiety disorder and depressive condition both of which are likely to be significantly reduced" if the Applicant's waiver application were granted. The Applicant's spouse further asserted, "If I move to Mexico with my husband . . . we wouldn't live a peaceful, safe and happy life like we do here in the U.S. [because] the level of crime in [redacted] has increased outrageously in the last few years."

The Director concluded that the record "does not address how [the Applicant's] wife would be unable to operate [their] restaurant or the necessity to sell it should [the] application be denied." The Director did not find that the Applicant's spouse's loss of permanent resident status would rise to the level of extreme hardship. The Director further concluded that the record "does not support a finding that [the Applicant's] wife's medical condition requires [the Applicant's] assistance to manage. Nor does it indicate she would be unable to obtain treatment abroad," noting that there is "no record of prior treatment" before the March 2021 evaluation.

On appeal, the Applicant reasserts the same bases of hardship as stated in support of the application. We note that the brief submitted on appeal bears many similarities to the brief submitted in support of the application, containing many paragraphs of verbatim language. For example, both briefs assert, "If [the Applicant] is forced to return to Mexico, [the Applicant and his spouse] will lose their business, home, and will not be able to fulfill their financial obligations, and possibly go bankrupt," which is essentially identical to the language in the statement from the Applicant's spouse noted above. The Applicant also reasserts that his wife would experience emotional hardship upon relocation.

The record does not establish that the Applicant's spouse would experience extreme financial hardship upon relocation. The Applicant specifically notes on appeal that he and his spouse "currently owned [*sic*] approximately $21,850,604 in real estate holdings ad [*sic*] personal savings [with] a total of $936,676 in liabilities or debt." The record also does not establish why the Applicant and his spouse cannot continue to own their U.S. restaurant, hiring staff to operate it in their absence. Even to the extent that the Applicant and his spouse cannot maintain ownership of their restaurant, the consequences of selling one restaurant, the potential inability of opening a new restaurant upon relocation, and any difficulty in otherwise finding new employment upon relocation to Mexico do not present extreme financial hardship to a married couple with a stated net worth of approximately $20 million. *See Matter of Pilch*, 21 I&N Dec. at 630-31. Moreover, given the considerable wealth of the Applicant and his spouse, the record does not support the Applicant's assertions on appeal that the Applicant's adult children "will no longer have the financial support [the Applicant and his spouse] are providing for their college education."

Next, although the loss of permanent resident status upon relocation may be a hardship for the Applicant's spouse, the record does not establish how this hardship rises above the common results of

[3] The Applicant's spouse asserts that her father and grandmother passed away from COVID and that her mother, who resides in Mexico, "is considered a COVID long hauler." The Applicant's spouse also asserts that she frequently visits her mother in Mexico to care for her.

removal. *See id.* Further, the record does not establish that the Applicant's spouse would experience extreme emotional hardship upon relocation. Although the psychologist evaluation diagnoses the Applicant's spouse with generalized anxiety disorder and depression and purports to provide the psychologist's "immigration based recommendations," it does not prescribe any medication or therapy to treat the diagnosed conditions. Because the evaluation does not prescribe any medication or therapy to treat the conditions, the evaluation does not support a conclusion that the Applicant's spouse would be unable to receive proper treatment upon relocation. Accordingly, the record does not establish that the Applicant's spouse would experience extreme emotional hardship upon relocation. *See id.*

Although the Applicant's spouse expresses concern for the level of crime in [redacted] Mexico, the record does not establish why the couple must live in a high-crime area of Mexico. As noted above, the Applicant and his spouse have a stated net worth of approximately $20 million and appear to be sufficiently financially independent to choose the location to which they would relocate.

Although we address each specific hardship factor identified on appeal separately, we have considered the issues in the aggregate, *Matter of Ige*, 20 I&N Dec. at 882, but find that they do not rise above the common results of removal. In summation, considering the record in its entirety, the Applicant has not established by a preponderance of the evidence that denial of the waiver would result in extreme hardship to her qualifying relative upon separation.

ORDER: The appeal is dismissed.