U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19987541

DATE: FEB. 04, 2022

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of South Korea, has applied for permanent residence 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 Los Angeles, California Field Office denied the application, concluding that the record did not establish that the Applicant's U.S. citizen spouse would experience extreme hardship if the waiver was not granted. On appeal, the Applicant presents new evidence and argues that her lawful permanent resident (LPR) parents will suffer extreme hardship if her waiver is not granted. She argues that the hardship to her parents when aggregated with the hardship experienced by her spouse and her spouse's mother rises to the level of extreme hardship.

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. LEGAL FRAMEWORK

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 (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).

II. ANALYSIS

The Applicant does not contest any specific error of fact or law with regard to the finding that she is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).[1] Furthermore, the Applicant does not assert any specific error of fact or law with regard to the Director's finding that she had not established that her qualifying relative spouse would experience extreme hardship if her waiver is denied. Therefore, the sole issues on appeal are whether (1) the Applicant has demonstrated that her LPR parents would suffer extreme hardship upon denial of the waiver or (2) that the hardship to her spouse in combination with the hardship claimed by the Applicant's mother-in-law would rise to the level of extreme hardship.

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 spouse and LPR parents. 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. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual.

On appeal, the record does not contain a specific statement from the Applicant's parents indicating whether they intend to remain in the United States or relocate to South Korea if the Applicant's waiver application is denied. However, their written statements appear to exclusively contemplate the possibility of separation if their daughter is denied admission. In addition, the mental health evaluation, which [redacted] conducted of both parents, contains the statement that "[t]he option of moving to South Korea with their daughter is unrealistic . . . ." As the evidence of record suggests that the Applicant's parents do not intend to relocate to South Korea, we limit our analysis to hardship claimed upon separation only.

Documentation submitted with the waiver application included evidence concerning hardship to the Applicant's U.S. citizen spouse. As stated, the Director found that the Applicant had not established that her spouse would suffer extreme hardship and since the Applicant does not contest that finding, we do not disturb it here. On appeal, the Applicant submits a statement from each of her parents; medical records for her mother; a September 2021 mental health evaluation of both parents, conducted by [redacted]; and a 2013 AAO decision that involved analyzing and aggregating the

[1] In addition to her inadmissibility under section 212(a)(6)(C)(i) of the Act, it appears as though the Applicant will likely soon be subject to an additional ground of inadmissibility for unlawful presence of one year or more under section 212(a)(9)(B)(i)(II). Service records indicate that the Applicant entered the United States on a B2 visa on June 21, 2003, with an admit date until December 20, 2003. The Applicant remained in the United States past December 20, 2003 and has not departed. Therefore, when the Applicant departs the United States, it appears as though she will be subject to a ten-year bar to her re-entry in accordance with section 212(a)(9)(B)(i)(II) of the Act.

hardship of non-qualifying relatives when it affects qualifying relatives. Although the record does not contain evidence of her parents' LPR status, service records indicate that they adjusted their statuses to that of LPR in January 2014. The Applicant contends that her parents would experience financial, medical, and emotional hardship upon separation.

Concerning the financial hardship claims, the Applicant's father stated that the Applicant supports him and his wife by paying a portion of their rent every month. However, the record does not include any savings, financial, or income statements for the Applicant's parents, nor does it include any evidence of their monthly rent and living expenses. Furthermore, the record contains little evidence of how much the Applicant contributes to her parents' rent, for how long she has assisted them in this way, or that such support is necessary. Counsel's brief indicates that the Applicant contributes $400 each month to her parents' rent; however, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988). Although the Applicant's father wrote in his statement that he cannot maintain his full-time job as a pastor of a church and a nursing home, the record does not indicate that he is no longer working. To the contrary, the mental health evaluation specifically indicates that he is in fact still working, stating that he has a master's degree in divinity and "serves the Korean-American community as pastor." Moreover, the evaluation states that the Applicant's father denied suffering from any financial crisis. Based on the information provided, it appears that the Applicant's father is still employed and does not have financial problems. The record contains little information concerning the employment status of the Applicant's mother; however, the mental health evaluation states that she "worked at the [redacted] in [redacted] for three years before her medical problems caused her to quit working."

Even if the record established that the Applicant's parents are currently suffering financial hardship or that they would upon separation from the Applicant, the record would still not support a finding that assistance would be unavailable in the Applicant's absence. The record does not indicate that even if separated, the Applicant would be unable to financially assist her parents. Regarding familial support, the mental health evaluation states that the Applicant's father has five siblings in South Korea, but that they are not financially secure and do not own property or businesses. The Applicant's mother has four siblings living in South Korea who have limited finances and do not own property, businesses, or other assets. While we acknowledge these assertions in the evaluation, there is insufficient evidence to support any of these claims. For example, the record does not demonstrate that the Applicant's parents have no family that can assist them in the absence of the Applicant or that their family's finances prohibit them from assisting. Finally, the record does not demonstrate that their church or their Korean-American community are unable or unwilling to financially assist them. Without a complete picture of the family's financial situation, including clarification of the contradictory statements identified above, we cannot determine the actual impact of separation upon the Applicant's parents.

Regarding medical hardship, the Applicant states that after her mother's heart attack, two strokes, and open-heart surgery, she served as her mother's caretaker during her hospital stays and by cooking and cleaning upon her mother's return home. However, the record does not contain sufficiently definitive information concerning the support the Applicant provides her parents currently, as opposed to the support her parents describe her as providing in the past. For example, although her mother states that she needs the Applicant to take her to medical appointments, her father's statement indicates that he is the one actually performing this duty. In addition, both of the Applicant's parents describe the past

help the Applicant provided in conjunction with the mother's immediate recovery, but neither describes in detail the ongoing assistance the Applicant provides, aside from keeping track of medical information and providing them with health tips. While the medical documentation indicates that the Applicant's mother has had a heart attack, heart surgery, and at least one stroke, as well as that she has diabetes, hypertension, and anemia, the medical records do not suggest the Applicant's mother is unable to care for herself or that she requires any assistance. The documents contain a list of her medications and note follow-up appointments but provide no recorded plan of care. In addition, the documents contain statements that the Applicant's mother has an intact mental state, normal gait, no balance issues, no motor weakness, and no abnormal movements. These documents do not support a finding that the Applicant's mother requires ongoing assistance nor does the record establish that if assistance is required, that it must be provided by the Applicant. Although the Applicant's father wrote in his statement, "I have my own health issues," the record does not contain any further detail concerning what his health issues are, any medical documentation to corroborate them, or any information on how the health issues affect him.

Returning to the mental health evaluation, we observe that the majority of the evaluation focuses on life histories and other background information that neither the Applicant nor her parents independently assert through their own statements. [redacted] opines that both of the Applicant's parents may suffer from depression connected to the Applicant's immigration issues; however, [redacted] offers no definitive diagnosis. Instead, he names the diagnostic tools used to evaluate the Applicant's parents and states that the clinical interview and test results "suggest[] a diagnosis of depression" and "support a diagnosis of depression." Additionally, while [redacted] writes that the Applicant's parents denied any suicidal ideations, the evaluation also indicates that suicide is a significant concern and a definite possibility. [redacted] offers no explanation for this contradiction.

Regarding the Applicant's father, the evaluation appears to indicate that prior to the denial of the Applicant's waiver, the Applicant's father did not suffer from any mental health issues. [redacted] states that the Applicant's father is worried about the Applicant's future and the impact the loss of his daughter will have on his wife. The Applicant's father self-reported a low energy level, lethargy, decreased productivity, and difficulty concentrating at work. In addition, he reported feeling sad, discouraged, disappointed, powerless, and irritable, with little interest in socializing and little satisfaction in life. Although [redacted] writes that the Applicant's father "was advised to seek mental health services including antidepressant medication if recommended," the evaluation does not indicate what mental health services he might require or that [redacted] definitively recommends any medication. Moreover, the record does not indicate that the Applicant's father has sought or is undergoing mental health treatment to address his self-reported symptoms.

Regarding the Applicant's mother, the evaluation indicates that the onset of her symptoms began in 2017, when the Applicant began having immigration issues and that she has been in mental health treatment for the past four years. The evaluation states that she "reported insomnia, anxiety, anergia, and despair," as well as feeling tired, discouraged, hopeless, and that she has failed her husband and daughter. In addition, the evaluation states that the Applicant's mother cries frequently, lost her sense of humor and desire to socialize with others, and ruminates about life without her daughter. The record contains no evidence of the Applicant's mother's mental health treatment the past four years or how effective it has been in treating these symptoms.

Overall, the evaluation contains the qualifying relatives' self-reported statements, while lacking a definitive diagnosis or treatment plan from the doctor. Neither the Applicant's parents nor the evaluation explains in sufficient detail how the Applicant provides mental health support to her parents or how they rely upon her for coping with their claimed mental health conditions. Without more, we cannot conclude that the record supports a finding that the mental health condition of the Applicant's parents requires the Applicant's physical presence in the United States or that they would suffer extreme mental health hardship if the Applicant were to return to South Korea.

With regard to emotional hardship, the Applicant's father reports that not sharing his life with his daughter would result in "immense and unbearable pain and suffering" for him, but that he is even more concerned about how the separation would affect his wife. The Applicant's mother reports that the Applicant provides her consistent emotional support, calls her frequently to check in on her, and that if she is separated from her daughter, she would experience emotional pain that is incomparably greater than her physical sufferings. While we acknowledge these statements, the record does not establish that the Applicant's emotional support would cease if she were not physically present. Based on the level of detail provided, it appears entirely possible, for instance, that the Applicant and her father could still share their lives with each other even if separated, and that the Applicant would be able to call her mother regularly. The record suggests that the Applicant's parents have longstanding ties in the United States and have resided here since 1998. As previously discussed, the mental health evaluation does not persuasively establish hardship or that effective treatment could not be obtained to lessen the emotional challenges presented upon separation. Considering the evidence in its totality, the record remains insufficient to show that the qualifying relative's emotional hardships would be unique or atypical, rising to the level of extreme hardship, if the Applicant is denied admission.

Turning now to the Applicant's spouse, we note that the Director's decision stated that the hardship the Applicant's spouse would experience, both individually and in the aggregate, would not amount to extreme hardship. The Director further stated that the Applicant did not provide evidence to establish hardship beyond that which is normal or expected upon removal. As previously stated, the Applicant does not allege any specific error of law or fact in the Director's findings. Nevertheless, in our *de novo* review, we briefly mention some of the spouse's hardship claims in order to aggregate them with the hardship claims of his mother, who is not a qualifying relative. Although we acknowledge the qualifying relative spouse has a mother who may experience hardship as well, we may consider the hardship to the Applicant's mother-in-law only as it affects her qualifying relative spouse. *See* 9 *USCIS Policy Manual* B.4(D)(2), https://www.uscis.gov/policymanual. Accordingly, "even if such derivative hardship does not rise to the level of extreme hardship by itself, it is a factor that should be considered when determining whether the qualifying relative's hardship, considered in the aggregate, rises to the level of extreme." *Id.*

We reviewed the materials submitted concerning the care the Applicant provides to her mother-in-law and while the mother-in-law prefers the Applicant's care over her own son's care, the evidence of record does not establish that the qualifying relative spouse is incapable of caring for his mother or that another person could not similarly perform this role. More importantly, the record does not contain a plan of care or determination by a doctor that the Applicant's mother-in-law is not capable of caring for herself or that she requires any specific caretaking assistance. Similarly, the documentation of record does not establish that the qualifying relative spouse is not capable of caring for himself or his mother. Although the Applicant's spouse may have lost an employment opportunity

due to Covid-19 and now relies upon the Applicant's income, the record does not support a finding that he is incapable of employment or unable not seek another job. The record also does not persuasively demonstrate that the Applicant would be unable to financially support her spouse and his mother even if she returned to South Korea. We thoroughly examined the hardship claims of the Applicant's spouse and the hardships claims of the Applicant's mother-in-law. Nevertheless, in the totality, the evidence of record is insufficient to persuasively establish that the qualifying relative spouse would suffer extreme hardship even when examining the hardships individually and cumulatively, as well as aggregating them with his mother's hardship claims.

On appeal, the Applicant presents hypothetical scenarios from the *USCIS Policy Manual*; however, the facts of those scenarios differ from the facts in the instant matter. *See* 9 *USCIS Policy Manual, supra*, at B.5(F). Moreover, for the purposes of the hypotheticals presented in the manual, it is assumed that the facts asserted are supported by appropriate documentation. *Id.* Here, the Applicant's assertions are not sufficiently or persuasively supported by appropriate documentation. We also observe that the Applicant has not asserted that hardship to her parents would affect hardship to her spouse and his mother or vice versa. Although we have aggregated hardship to the Applicant's qualifying relative spouse with the hardship claims of his mother (to the extent that they affect the qualifying relative spouse), the Applicant has not explained the basis for aggregating the hardship to the Applicant's spouse and mother-in-law with the hardship claims of the Applicant's parents.

We affirm the Director's determination that the record does not demonstrate that the extreme hardship to the qualifying relative spouse would result upon separation or relocation, even when aggregating the hardship claims of his mother. After review of the evidence submitted with the waiver application and on appeal, we furthermore conclude that the Applicant has not established that extreme hardship to the qualifying relative parents would result upon separation.

Although we recognize that the qualifying relatives may face some difficulties if the Applicant's waiver is denied, based on the record, 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 in the aggregate. Accordingly, 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.