U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19673562

Date: FEB. 08, 2022

Appeal of Denver, Colorado Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant 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 misrepresentation of material facts. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. If the noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. Section 212(i) of the Act.

The Director of the Denver, Colorado Field Office found that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact at the time of his admission. The Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's qualifying relative, his U.S. citizen spouse, would experience extreme hardship if he were denied the waiver. The matter is now before us on appeal.

On appeal, the Applicant contends that the Director did not consider all of the evidence of hardship to his qualifying relative in the aggregate and that he warrants a favorable exercise of discretion.

It is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews 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 sustain 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.

This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or LPR spouse or parent. Sections 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 record reflects that, on September 16, 1995, the Applicant attempted to enter the United States by presenting a valid Texas birth certificate belonging to another individual to an immigration officer at the port of entry. After making a false claim to U.S. citizenship, the Applicant was ordered excluded and deported from the United States by an Immigration Judge on [redacted] 1995. The Applicant departed the United States on [redacted] 1995, and immediately returned on or about the same date without admission and inspection or parole, and without consent to reapply for admission.[1]

The Applicant does not contest his inadmissibility. The issue on appeal is whether the Applicant has demonstrated that his U.S. citizen spouse would experience 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 his U.S. citizen spouse. Section 212(i) of the Act. 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. 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 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)). 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 id.* In the present case, the record reflects that the Applicant's spouse intends to relocate to Mexico if the Applicant's waiver application is

[1] Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen, other than an "arriving alien," who has been ordered removed under section 240 or any other provision of law, or who departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such departure or removal, is inadmissible. Noncitizens found inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act if, prior to the date of the reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

denied. The Applicant must therefore establish that if he is denied admission, his qualifying relative would experience extreme hardship upon relocation.

In his waiver application, the Applicant stated that his U.S. citizen spouse would experience extreme emotional, medical, and financial hardship if she were to accompany him to Mexico. He submitted evidence, including medical records, to demonstrate that his wife suffers from diabetes, as well as generalized anxiety disorder and depression. He asserted that living conditions in Mexico would be dangerous and inferior to conditions in the United States, causing physical and financial harm to his spouse if she would accompany him, and resulting in an inability to receive proper treatment for her medical conditions.

The Director acknowledged the severity of the Applicant's violations of law but noted that the Applicant had substantial family and community ties, with four adult U.S. citizen children and a business that offered employment to three employees. The Director also stated that the Applicant had no known criminal convictions and the record suggested that he had reformed his character from his previous deceptive behavior. The Director found that "the positive discretionary equities in [the Applicant's] case outweigh the negative."

With respect to hardships to the Applicant's qualifying relative, the Director acknowledged that medical records documented the Applicant's spouse's anxiety and depression, and that the Applicant expressed concerns over financial difficulties his family may face if he were denied admission. The Director determined that, although the Applicant's spouse would suffer common hardships involved in the separation of a family, the Applicant did not establish that these hardships would be extreme.

On appeal, the Applicant asserts that the Director did not consider the evidence of hardship in the aggregate and in the totality of the circumstances. The Applicant reiterates his claims of extreme hardship to his spouse and adds that her anxiety and depression has worsened, as demonstrated by updated medical records, especially since the recent death of his oldest son. The Applicant also provides statements from his three children (ages 35, 28 and 22) describing the important role he has played in their life providing financial and emotional support, and the impact his removal from the United States would have upon their family.

The Applicant has resided in the United States for more than 25 years. As noted above, the Applicant's spouse has stated that she will relocate to Mexico with the Applicant if he is denied admission to the United States. The Applicant's spouse was born in Mexico and has resided in the United States for more than 20 years, never having returned to Mexico. Both the Applicant and his spouse have family living in Mexico to whom they provide financial support, including the Applicant's spouse's mother, her brother with disabilities, and her sister suffering from a chronic illness. The Applicant submits documentation stating generally high crime rates in the states where he and his spouse have ties in Mexico and asserts that they would not be safe living anywhere in Mexico.

The Applicant reiterates his claim that his spouse would experience financial hardship, as they would be unable to continue the business they own in the United States upon relocation to Mexico. The Applicant and his spouse own two flooring design and installation businesses. The record includes the Applicant's federal income tax returns demonstrating that the Applicant's primary income is from his business and documenting the finances of both businesses. The record also includes evidence of

the Applicant's business expenses and upcoming projects expected to generate income. On appeal, the Applicant attests that, in addition to providing financial support for his spouse and her family in Mexico, he provides financial support for his youngest daughter attending college.

With regard to emotional and medical hardship, the Applicant asserts that his spouse's medical conditions have worsened since the sudden death of his son in June 2021 and she has actively participated in therapy for her depression and anxiety. Updated medical records and a letter from her physician support these claims. The record also includes country conditions information regarding the unavailability of treatment in Mexico for the Applicant's spouse's conditions.

Considering all of the evidence relating to the financial, emotional and psychological situation of the Applicant's spouse in its totality, including new evidence submitted on appeal, we find that the record demonstrates that the financial, medical and emotional hardships she would experience, when aggregated, would rise to the level of extreme hardship. We also agree with the Director's finding that the Applicant merits a favorable exercise of discretion, as the positive discretionary factors, including the Applicant's expression of remorse for his immigration violations and his substantial family and community ties, outweigh the negative.

The Applicant has established by a preponderance of the evidence that denial of the waiver application would result in extreme hardship to a qualifying relative upon relocation and that he merits a favorable exercise of discretion. Section 212(i) of the Act; *Chawathe*, 25 I&N Dec. at 375; *see also* 9 *USCIS Policy Manual*, *supra*, at B.4(B).

ORDER: The appeal is sustained.