U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18048853

Date: FEB. 8, 2022

Appeal of Phoenix, Arizona 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).

The Director of the Phoenix, Arizona Field Office denied the application, concluding that the record did not establish that the Applicant's LPR spouse, the only qualifying relative, would experience extreme hardship if the waiver was not granted.

On appeal, the Applicant does not contest the finding of inadmissibility, a finding supported by the record.[1] He contends that his spouse will experience extreme hardship in the form of medical, financial, and emotional difficulties if his waiver is denied. He submits hardship evidence in support of these claims.

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

[1] The Applicant, a citizen of Mexico, admits to presenting a fraudulent U.S. birth certificate at a U.S. port of entry in February 1996. Since the Applicant made a false claim to U.S. citizenship prior to September 30, 1996, a waiver is available under section 212(i) of the Act.

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 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. 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. In the present case, the record contains no statement from the Applicant's spouse indicating an intent 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 he is denied admission, his qualifying relative would experience extreme hardship both upon separation and relocation. Here, we find the Applicant would not experienced extreme hardship upon separation.

Documentation submitted with the waiver application includes but is not limited to statements from the Applicant and his spouse, statements from the Applicant's friends and family members, copies of his spouse and children's medical records, and copies of his family's financial records. The Applicant contends that his spouse would experience medical, financial, and emotional hardship both upon separation and relocation. The Applicant asserts that his children would also suffer upon separation. Hardship to the applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002). We may consider the hardship to the Applicant's children only as it affects his qualifying relative spouse. *See* 9 *USCIS Policy Manual*, *supra*, at B.4(D)(2).

Regarding medical hardship, the Applicant states his spouse suffers from major depressive disorder, single episode, moderate, with anxious mood. A statement from the Applicant's spouse indicates her anxiety is caused by worries over being separated from the Applicant as well as the impacts on their children. The record includes a psychological evaluation from 2019 indicating the spouse had no prior physical or mental health conditions but started experiencing symptoms of major depressive disorder when the Applicant began having immigration issues. The spouse's medical provider recommended additional psychotherapy, medication, and other cognitive and behavioral therapies. However, the record does not contain any documentation indicating the Applicant's spouse is on any work restrictions or has a need for any daily assistance.

Concerning financial hardship, the Applicant argues that his spouse would be unable to pay their household bills should separation occur. However, the record indicates the Applicant's spouse works full-time for a university which also provides health benefits and retirement plans. The Applicant's spouse stated she is worried she would not be able to pay the mortgage or other bills should the Applicant's waiver be denied. While the Applicant submitted documentation showing various household bills, it does not demonstrate that the Applicant's spouse would be unable to financially support the family in the Applicant's absence and the record does not contain evidence showing the economic detriment would be more than a "common result of deportation." *See Matter of Pilch*, at 630-631

With regard to emotional hardship, the Applicant claims his spouse would experience stress in his absence because he would have to care for their three children. Their oldest child had a pacemaker installed as a young child but requires future surgeries to replace the pacemaker. The record indicates that the child's pacemaker is currently working well and recommends the child be allowed to participate in physical activity such as competitive sports. The Applicant's daughter had ACL surgery in 2018 but the record does not indicate any medical or work restrictions resulting from the injury. The youngest child has a heart murmur that is being monitored by medical providers but does not have any restrictions on physical activities or school. Additionally, the record reflects that the Applicant's two older children are in college and able to assist each other with future medical appointments while the spouse has family ties and a support network in the United States to help care for the children and there is insufficient evidence that this support network could not provide emotional or other support in the Applicant's absence. Although we acknowledge the statements of the Applicant's spouse regarding the emotional strain separation may cause, the record does not contain further detail about the impact of any emotional hardship his spouse may experience in their daily life.

Additionally, the Applicant included country condition information about Mexico. However, because the Applicant's spouse has not shown she would experience extreme hardship upon separation, we need not address her argument that conditions in Mexico would cause her extreme hardship if she relocates there with the Applicant.

On appeal, the Applicant submitted additional letters from himself and his family. The letter from the Applicant's oldest son indicates he will need future surgeries due to his pacemaker and the Applicant's spouse will be unable to help with these surgeries and recoveries. However, the Applicant did not provide any updated documents supporting the spouse's claim she would be unable to assist with their child's medical appointments and surgical recoveries. Additionally, the spouse has a family network in the United States able to assist with the care of her oldest child when experiencing medical issues. The other letters reiterate the Applicant's spouse would experience medical, financial, and emotional hardship should the Applicant's waiver be denied.

Although we recognize that the Applicant's spouse may face some hardships upon separation, based on the record, 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 upon separation. As the Applicant has not established extreme hardship to his spouse in the event of separation, we cannot conclude he has met this requirement.

ORDER: The appeal is dismissed