U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20844260

Date: FEB. 22, 2022

Appeal of Los Angeles, California 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 and seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if denying the waiver would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Los Angeles, California Field Office denied the waiver, concluding that the Applicant did not establish extreme hardship to her spouse, the only qualifying relative in this case. On appeal, the Applicant contends that she established the requisite extreme hardship to her spouse and that a favorable exercise of discretion is warranted and submits new evidence, which includes medical records of her spouse.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will remand the matter to the Director for the entry of a new decision.

The Applicant does not contest her inadmissibility. The issue on appeal is whether the Applicant has demonstrated her U.S. citizen spouse would extreme hardship upon denial of the waiver. However, we are unable to determine whether the Director properly denied the waiver because the record does not establish that the Director applied a correct standard of proof in evaluating the evidence of hardship. Specifically, the Director stated "[i]n order to qualify for 'an extreme hardship' waiver . . . [the Applicant's spouse] must demonstrate with clear and convincing evidence that your removal from this country would force him to suffer above and beyond what other United States citizen or lawful permanent resident related to a removable alien would suffer." However, in these proceedings the standard of proof is not "clear and convincing," but "by a preponderance of the evidence." *Matter of Chawathe*, 25 I&N Dec. at 375*; see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965).

Furthermore, the Director's statement that the record must demonstrate that the qualifying spouse would suffer "above and beyond what other United States citizen or lawful permanent resident related to a removal alien would suffer" is also misleading. 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).

Lastly, in these proceedings, it is the applicant's burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. at 375.

We will remand the matter to the Director to consider the evidence of hardship under the correct standard of proof and to determine whether the Applicant has established extreme hardship to her qualifying relative, and if so, whether she warrants a waiver in the exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.