U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8163221

Date: FEB. 24, 2022

Appeal of Lawrence, Massachusetts Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Pakistan, has applied to adjust status to that of a lawful permanent resident 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 willful misrepresentation.

The Director of the Lawrence, Massachusetts Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, and that the record did not establish that his lawful permanent resident (LPR) spouse, the only qualifying relative, would face extreme hardship if the Applicant is unable to remain in the United States.

The matter is now before us on appeal. On appeal, the Applicant argues that the denial was arbitrary, capricious, and not based upon the substantial evidence in the record.

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 return the matter to the Director for the entry of a new decision.

I. LAW

Any foreign national 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 the U.S. citizen or lawful permanent resident spouse or parent of the foreign national. 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). 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. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act for willfully mispresenting a material fact by providing fraudulent documents in an attempt to procure an immigration benefit. On appeal, the Applicant does not contest the finding of inadmissibility. Thus, the Applicant must establish that denial of the waiver would result in extreme hardship to a qualifying relative or qualifying relatives, in this case his LPR spouse.

The record reflects that the Applicant is the Beneficiary of an approved Form I-130, Petition for Alien Relative (alien relative petition), filed on his behalf by his U.S. citizen daughter. In August of 2019, the Applicant's daughter offered testimony to U.S. Citizenship and Immigration Services (USCIS) in connection to the alien relative petition, stating that the Applicant has children and family currently residing in Pakistan, and that two of his children reside in the family home still owned by the Applicant and his LPR spouse.

In support of the waiver application, which was submitted concurrently with the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, the Applicant provided a personal statement and an affidavit from his spouse, both of which attested that the spouse would suffer extreme emotional and financial hardship upon separation from the Applicant. In support of medical hardship, the Applicant submitted medical health summaries and records for his spouse, as well as a letter from his spouse's primary care physician, which identified and described her physical and mental ailments and associated treatments.

In denying the waiver application, the Director relied solely on the daughter's testimony provided in support of the alien relative petition, and concluded as follows:

> Although it is understandable that it would be an inconvenience to have to leave the United States and return to Pakistan, the information you provided in support of your claim does not rise to the level of extreme hardship. Accordingly, along with the continued family ties and family property still in your possession in Pakistan where your family is currently living, USCIS hereby denies your Form I-601.

On appeal, the Applicant asserts that the Director erred by not considering any of the hardship evidence he submitted in support of the waiver application, or explaining why the submitted evidence was insufficient to establish extreme hardship to his LPR spouse. The Applicant further asserts that the Director should have based the decision on the evidence in the record, and relying solely on the statements provided by his daughter, of which he was unaware prior to the denial, constitutes error.

Upon review, we agree with the Applicant's assertions. The record reflects that the Director based her denial on testimony provided by the Applicant's daughter in connection with her alien relative petition. If the denial will be based on derogatory evidence or information of which the Applicant is unaware, the Director must advise the Applicant of the derogatory evidence and allow him the opportunity to rebut the information and present information on his own behalf before the decision is rendered. *See* 8 C.F.R. § 103.2(b)(16)(i). Here, the Director did not give the Applicant proper notice of all derogatory information that may impact her decision on the waiver application prior to issuing it, and the failure to do so constitutes error.

Moreover, although the Director listed the supporting evidence provided by the Applicant in the denial decision, she did not analyze this evidence or explain specifically why it was insufficient to establish extreme hardship to the Applicant's spouse. As noted above, the Applicant and his spouse assert that the spouse will suffer extreme emotional, financial, and medical hardship upon separation, and these assertions are accompanied by documentary evidence. The denial, however, is silent on this issue of whether the Applicant has established extreme hardship to the LPR spouse as required; instead, the Director generally concludes that "the information you provided in support of your claim does not rise to the level of extreme hardship."

Here, the Director improperly introduced derogatory information in the denial notice, and did not adequately explain why the submitted hardship evidence was deficient. Moreover, the brief analysis in the decision does not indicate that the Director's decision was based on a review of the totality of the evidence submitted. For these reasons, the Director's decision did not adequately address why the Applicant's evidence was insufficient to meet its burden of proof, and the decision is withdrawn.

III. CONCLUSION

As the Director did not sufficiently address the Applicant's claims and supporting evidence or provide proper notice of derogatory information, the matter will be remanded for further review and entry of a new decision. The Director should consider the evidence submitted in support of the waiver application and permit the Applicant to submit evidence in rebuttal to the derogatory information in the file. The Director should then issue a new decision determining whether the Applicant has established extreme hardship to his qualifying relative and, if so, whether a favorable exercise of discretion is warranted.

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