U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20724996

Date: JUN. 23. 2022

Appeal of Des Moines, Iowa 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 section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The Director of the Des Moines, Iowa Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's U.S. citizen spouse, the only qualifying relative, would experience extreme hardship if he were denied the waiver. The Director further determined that, even if the Applicant had established statutory eligibility for the waiver by demonstrating extreme hardship, he did not establish that his application merits a favorable exercise of discretion.

On appeal, the Applicant contends the Director did not fairly and properly consider all the hardship evidence in the record, and that he established that his spouse would experience extreme hardship due to his inadmissibility.

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). This office reviews the questions in this matter *de novo*. *See Matter of Christo's Inc*., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Any noncitizen convicted of two or more crimes (other than purely political offenses), for which the aggregate sentences amount to confinement of five years or more is inadmissible. Section 212(a)(2)(B) of the Act. Noncitizens found inadmissible under section 212(a)(2)(B) of the Act may seek a waiver of inadmissibility under section 212(h) of the Act, which provides for a discretionary waiver where the activities occurred more than 15 years before the date of the application if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the foreign national has been rehabilitated (Section 212(h)(1)(A) of the Act), or if denial

of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) 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 the finding of inadmissibility, which is supported by the record. The issues on appeal therefore are whether the Applicant has established extreme hardship to a qualifying relative and whether he merits a favorable exercise of discretion. Upon consideration of the entire record, including the arguments made on appeal, we conclude that the Applicant has not established that his U.S. citizen spouse would experience the requisite extreme hardship.[1]

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. 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. *See* 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 an applicant's evidence establishes 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.* The Applicant discussed how his spouse would experience extreme hardship both upon separation and relocation. In the present case, the evidence of record does not indicate whether the Applicant's spouse intends to remain in the United States or relocate with the Applicant to Kenya if the waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

Documentation submitted with the waiver application includes but is not limited to a statement from the Applicant's U.S. citizen spouse, an evaluation and progress reports from a clinical social worker regarding diagnosis and treatment of the spouse, copies of bank statements, a lease agreement for the apartment rented by the Applicant and his spouse, and country conditions information. The Applicant

[1] While we may not discuss every document submitted, we have reviewed and considered each one.

contends that his qualifying relative would experience extreme emotional and financial hardship because of his continued inadmissibility.

The record reflects that the Applicant met his U.S. citizen spouse in 2015 and married her in 2017. The Applicant explained that his spouse was diagnosed with severe post-traumatic stress disorder (PTSD) arising from the atrocities she witnessed, and the trauma she endured, when she lived in Liberia during that country's civil war, including the murder of her father, her experience living in a refugee camp for years, and the mysterious loss of her child. The Applicant's spouse was able to flee from her refugee camp and entered the United States and began a new life with full-time employment and a loving community of friends and family. The Applicant's spouse also lives with and cares for her 82-year-old mother, who suffers from several serious medical ailments.

Regarding separation, the Applicant's spouse contends that she will experience emotional and financial hardship were she to remain in the United States while the Applicant relocates abroad. She maintains that she depends on the Applicant very much, and that he helps her manage her PTSD. The Applicant submitted documentation from a licensed clinical social worker who evaluated his spouse and continues to treat her, and described the Applicant's spouse's reported symptoms as including, but not limited to: depressed mood, sadness, crying spells, constant worry, flashbacks, nightmares, insomnia, agitation, hostility, mistrust, hypervigilance, fear, irritability, social isolation, loss of interest, guilt, loneliness, and emotional detachment. While we do not minimize PTSD and acknowledge that the recommended treatment is further counseling, the record does not show that the Applicant's spouse's situation, or the symptoms she is experiencing, are unique or atypical compared to others in similar circumstances. For example, the record does not show that she has any physical or mental health issues that affect her ability to work or carry out other activities, or that she requires the Applicant's assistance to conduct her daily affairs. Because the social worker listed symptoms she suffers and did not address the exact nature and severity of these conditions and describe the specific family assistance she needs, we cannot ascertain the severity of those conditions or determine the degree to which the Applicant's physical presence is required to manage them. Although the Applicant's spouse asserts in her 2020 statement that her husband has been helping her manage her PTSD and claimed he "always has a positive mind and a solution with my PTSD as I can't handle a lot," the Applicant has not submitted any further information that would explain specifically how he helps his wife manage her condition. These statements, alone, are not sufficient to carry his burden. In addition, the Applicant stated the spouse is part of a large community of friends and family but there is no indication that other family members or friends would be unable or unwilling to assist the Applicant's spouse, if needed.

Regarding financial hardship, the Applicant stated that he provides financially to the family since he works full-time. He also stated that they currently reside with his elderly mother-in-law who has several serious medical conditions. The Applicant also stated that since he is able to care for his mother-in-law, his spouse is able to work more hours and make more money. The Applicant stated that if he left, his spouse would lose his income and may not be able to maintain her current income if she needs to care for her mother. The Applicant also explained that they have debt and must pay for rent, car payments, and medical needs for themselves and the mother-in-law. However, the Applicant did not provide a detailed budget breaking down the family's monthly expenses and detailing his actual contribution to the expenses. Further, although the Applicant stated his spouse can work more hours since he is taking care of his mother-in-law, he did not provide any documentation to evidence of the

actual financial loss the family would incur if he had to leave. In addition, the Applicant's spouse has worked for the same company since 2013 and earns a salary of approximately $33,000 per year. Without additional documentary evidence, it is difficult to determine the actual financial impact on the qualifying relative if the Applicant moved abroad since the spouse maintains full-time employment. The Applicant has also not submitted any documentation in support of the contention that he would not be able to obtain gainful employment abroad to assist in supporting his family as needed.

The evidence in the record is insufficient to establish that the spouse's hardships, considered individually and cumulatively, would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship due to separation from the Applicant. The spouse's statement indicates generally that the Applicant is supportive, but the record does not establish that separation from the Applicant would affect her ability to function in her daily life. Regarding financial hardship, while we acknowledge the spouse may experience some financial difficulty without the Applicant, the record does not demonstrate that she will face a financial strain that would go beyond the hardship typically resulting from separation from a spouse.

Because the evidence of record does not indicate whether the Applicant's spouse would remain in the United States or relocate with him to Kenya if the waiver application is denied, the Applicant was required to establish that denial of the waiver application would result in extreme hardship to a qualifying relative upon both separation and relocation. As he did not establish extreme hardship to his qualifying relative in the event of separation, we cannot conclude he has met this requirement. As such, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. Section 291 of the Act, 8 U.S.C. § 1361. Here, he has not met that burden.

ORDER: The appeal is dismissed.