U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15868938

Date: MAR. 04, 2022

Appeal of Holtsville, New York Field Office Decision

Form I-601, Application to Waive Grounds of Inadmissibility

The Applicant, a native and citizen of Haiti currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility.

The U.S. Department of State found the Applicant inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The Applicant then applied for a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i). The Director of the Holtsville, New York Field Office denied the waiver application. The application is now before us on appeal.

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 seeks to procure, sought to procure, or has procured a benefit under the Act by fraud or willfully misrepresenting a material fact 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 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 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 her inadmissibility. In 2010, the Applicant attempted to enter the United States using a falsified Haitian passport and Form I-551, Permanent Resident card. She is therefore inadmissible for fraud or willful misrepresentation. In the decision denying the waiver application, the Director determined that the Applicant did not demonstrate that her qualifying relative, her U.S. citizen husband, would experience extreme hardship if the Applicant were denied admission. On appeal, the Applicant states that her husband would experience such hardship if her application were denied.

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 of these scenarios is not required if the applicant's evidence demonstrates 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/legal-resources/policy-memoranda. In the present case, the Applicant states that U.S. Citizenship and Immigration Services should examine both the separation and relocation scenarios.[1] Additionally, the qualifying relative's affidavit does not specify whether he would relocate or stay in the United States if the waiver petition were denied. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

With her appeal, the Applicant submits a brief and two letters from her husband's doctors, which claim that the Applicant's husband will experience extreme medical hardship if her waiver application is denied. The letter from [redacted] a neurologist, states that the Applicant's 45-year-old husband has "chronic memory loss and increase [*sic*] forgetfulness" and "has difficulty in his daily living activities due to his memory problems." It also states that according to the Applicant's husband, the Applicant helps care for him. However, neither the letter nor the appeal brief specifies what difficulties he is having in daily life, which activities are affected and to what extent, and how, specifically, the Applicant is providing care for him.

The second letter, from [redacted] states that the Applicant's husband has chronic low back pain and retrograde amnesia and that his wife is his primary caretaker. However, it also does not give any specific information about how his conditions affect his daily life and how his wife's absence would affect him medically. It is therefore not apparent from these letters that the Applicant's husband would suffer extreme hardship upon separation.

[1] The Applicant's brief on appeal states that we "must consider both scenarios before [we make] a determination (separation and relocation)," and that we must rule on whether both scenarios would cause extreme hardship. However, as noted above, the burden of proof is on the Applicant to demonstrate eligibility. Section 291 of the Act. If the Applicant fails to meet this burden for either the relocation or separation scenario, the issue is dispositive of the appeal and there is no need to examine the other scenario. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

The record reflects that the Applicant's husband has extensive family ties in the United States. The psychological evaluation submitted with the waiver application states that her husband's mother, two sisters, and one brother all live in [redacted] There is insufficient evidence that these family members could not provide medical, emotional, or other support in the Applicant's absence. The psychological evaluation also states that the Applicant's husband has suffered memory problems since childhood. The Applicant and her husband married in 2013, when he was 36 years old. The record does not indicate that he could not support himself prior to having the Applicant's care. It further indicates that the Applicant's husband has worked full-time at the same job as a pizza delivery person for several years and continues to do so. The evidence of record does not contain sufficient information to demonstrate that the Applicant's husband would suffer extreme medical hardship if she were denied admission.

As to economic hardship, the record indicates that the Applicant is not employed and that her husband is the only wage-earner in their household. The Applicant is the main caregiver for their daughter. While the brief submitted on appeal contends that the Applicant's husband will not be able to continue working while also having to care for their daughter in the event of separation, it does not discuss why he could not find alternative childcare or receive help from the family members he has living nearby. This does not suffice to establish that the Applicant's husband will suffer extreme economic hardship upon separation.

The brief submitted on appeal further states that the Applicant's husband will suffer emotional hardship upon denial of the waiver application. However, the evidence of record fails to establish how the emotional hardship resulting from separation from the Applicant would exceed that which is usual or expected in such cases. The psychological evaluation provided with the waiver application diagnoses the Applicant's husband with "clinically significant symptoms of depression and anxiety," further stating that his depression is in the "mild severity range" and his anxiety is in the "moderate severity range." It further states that the Applicant's husband relies on her to care for the children, remember appointments, pay bills, and perform other household tasks, especially given his memory problems. However, as noted above, the Applicant's husband has four immediate family members living nearby, and it is not apparent from the documentation provided that he was unable to support himself prior to receiving the Applicant's care. We acknowledge that separation from his wife would cause the Applicant's husband emotional distress. However, the evidence of record does not suffice to demonstrate how this distress would rise beyond the common results of removal.

Finally, the brief submitted on appeal states that we failed to account for the Applicant's child when adjudicating her waiver petition. We note that the Applicant's child is not a qualifying U.S. relative under Section 212(i) of the Act. The child's hardship can only be considered insofar as it affects the qualifying U.S. relative, the Applicant's husband. The only evidence submitted regarding the Applicant's daughter was school reports indicating that she is developing normally for her age. It is not apparent from these documents how upon separation, any hardship of the Applicant's daughter would cause the Applicant's husband extreme emotional hardship.

In sum, the Applicant must establish that denial of the waiver application would result in extreme hardship to her spouse both upon separation and relocation. As the Applicant has not established extreme hardship to her spouse in the event of separation, we cannot conclude she has met this requirement. The totality of the record, when considered individually and cumulatively, does not

establish that the Applicant's qualifying relative, her husband, would suffer extreme hardship if she moved back to Haiti and he remained in the United States. As such, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion. *Bagamasbad*, 429 U.S. at 25. The Applicant does not qualify for a waiver of her inadmissibility under Section 212(i) of the Act, and the waiver application will therefore remain denied.

ORDER: The appeal is dismissed.