U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20812057

Date: MAY 31, 2022

Appeal of Philadelphia, Pennsylvania 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 sections 212(h) and 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h) and 1182(i), for a crime involving moral turpitude and for fraud or willful misrepresentation of a material fact.

The Director of the Philadelphia, Pennsylvania 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 qualifying relatives 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.

The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and contends that the Director failed to apply the preponderance of the evidence standard in evaluating his statutory eligibility for a waiver and in reaching a discretionary determination.

We review the questions in this matter *de novo*. *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, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. Section 212(a)(2)(A)(i) of the Act. There is a "petty offense" exception of this inadmissibility for noncitizens who have been convicted only one crime involving moral turpitude if: (1) the maximum penalty possible for the crime of which the noncitizen was convicted did not exceed imprisonment for one year and (2) the noncitizen was not sentenced to a term of imprisonment in excess of six months. Section 212(a)(2)(A)(ii)(II) of the Act. Noncitizens who are inadmissible under section 212(a)(2)(A)(i) may seek a discretionary waiver of inadmissibility under section 212(h) of the Act.

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. There is a 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. If the noncitizen demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. 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 primary issue on appeal is whether the Applicant established that his qualifying relative(s) would experience extreme hardship if his waiver application is denied, and, if so, whether his application warrants a favorable exercise of discretion. However, as a preliminary matter, we will address whether the Applicant requires a waiver of inadmissibility for a crime involving moral turpitude under section 212(h) of the Act. The Applicant does not contest the finding of inadmissibility for fraud or willful misrepresentation. The record supports the Director's determination that the Applicant misrepresented his identity when applying for asylum and failed to disclose this misrepresentation and a prior removal order in subsequent proceedings.

A. Inadmissibility under Section 212(a)(2)(A)(i) of the Act

The Applicant stated on his waiver application that he was convicted on a misdemeanor embezzlement charge in Virginia. He indicated that he does not believe that the charge renders him inadmissible under section 212(a)(2)(A)(i) of the Act, but that he was requesting a waiver under section 212(h) of the Act in the event that USCIS deems him inadmissible based on this conviction.

The record reflects that the Applicant was arrested and charged with embezzlement under Section 18.2-111 of the Virginia Code in 1994 and that he pled guilty to this charge, a Class 1 misdemeanor. He was sentenced to 30 days in jail with work release authorized. We agree with the Director's determination that the conviction is for a crime involving moral turpitude. However, the controlling punishment statute at the time, Va. Code § 18.2-11(a) (1990), provided that the maximum sentence for a Class 1 misdemeanor was confinement in jail for not more than 12 months and/or a fine between

$1,000 and $2,500. Based on this statute and evidence demonstrating that the Applicant was sentenced to less than 6 months of confinement in jail, the record establishes that he meets the requirements for the "petty offense" exception to this inadmissibility under section 212(a)(2)(A)(ii)(II) of the Act. For this reason, we conclude that the Applicant does not require a waiver of inadmissibility under section 212(h) of the Act.

B. Extreme Hardship

To establish his statutory eligibility for a waiver of inadmissibility for fraud or willful misrepresentation, the Applicant must demonstrate that denial of his application would result in extreme hardship to his U.S. citizen spouse, his only qualifying relative. 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/policy-manual.

On appeal, the Applicant contends that the Director did not fully address the hardship his spouse would face upon separation and instead focused on hardship that would be associated with her relocation to India. The record contains an affidavit from the Applicant's spouse in which she states that she "cannot and will not accompany him" to India if the waiver application is denied. The record therefore reflects that she intends to remain in the United States and the Applicant must demonstrate extreme hardship in the event of separation.

The record reflects that the Applicant and his spouse have been married since 1985 and they have three adult U.S. citizen children, including two sons who resided when he filed the waiver application in November 2020. In her affidavit, the Applicant's spouse explains that he came to the United States in 1993 to seek asylum and that she joined him in 1997, with the children following in 2004. She indicates that she began experiencing mental health problems, including anxiety and depression, in 2006 and that she has been seeing a psychiatrist regularly and taking medication to treat her condition since that time. She relates that her mental health problems worsened and became debilitating due to financial stress caused by the couple's declaration of bankruptcy in 2012 and during a six-month period in 2013 when the Applicant was detained by Immigration and Customs Enforcement (ICE). Specifically, she states that she began to experience suicidal thoughts and was no longer able to work and perform daily tasks due to depression and episodes of confusion and blackouts.

The Applicant's spouse states that her suicidal thoughts ceased upon the Applicant's release from ICE custody in 2013, but explains that she never returned to work, no longer drives due to medical issues, and continues to see her psychiatrist for mental health counseling and prescription medication, as well as a primary care physician who manages her medications for various chronic physical conditions. She maintains that she cannot be left home alone and that the Applicant and their sons arrange their schedules to ensure someone is always with her. She emphasizes that she primarily relies on the Applicant for physical, emotional, and financial support and the loss of this support would be

extremely detrimental to her. The Applicant's spouse expresses particular concern for her mental health, noting that her depression and anxiety have previously worsened significantly when she is under stress.

In addition to the affidavit from his spouse, the Applicant submitted a personal affidavit, affidavits from the couple's three children, and affidavits from two relatives (a niece and a nephew) who state they assisted his spouse while he was detained by ICE in 2013. These additional affidavits address the spouse's mental health and other health issues, her reliance on the Applicant for emotional support, and the difficulty she would have coping with separation from him. The Applicant also submitted his spouse's medical records and several psychological evaluations, evidence of the couple's declaration of bankruptcy in 2012, their 2018 individual income tax return, the 2018 corporate tax return for the trucking business co-owned by the Applicant, and several articles and reports that discuss the state of mental healthcare in India.

The record contains medical documentation including a 2020 letter from the Applicant's spouse's physician stating that she has "multiple medical conditions," including depression for which she sees a counselor on a monthly basis and takes two medications which "help a little." The physician states that her depression would worsen if the Applicant were forced to leave the country. The Applicant also provided copies of similar letters prepared by the same physician in 2012, 2013 and 2014. The medical documentation includes an outpatient visit summary for the Applicant's spouse from March 2021, indicating that she was seen by a physician for allergic rhinitis, chronic cough, and chronic gastroesophageal reflux disease (GERD), and that her other reported conditions include anxiety, hypertension, hyperlipidemia, knee pain, latent tuberculosis and leukopenia. Finally, the Applicant submitted a clinical visit summary with his spouse's primary physician from 2016, which mentions many of the same conditions and indicates that she was being treated with medications prescribed for allergies, high blood pressure, high cholesterol, acid reflux, anxiety/depression, headaches, and pain management.

With respect to medical hardship, while the evidence addressed above notes the Applicant's spouse's conditions and prescribed medications, the brief letters and visit summaries provide little detail regarding her current treatment, her prognosis, or the level of assistance she may require managing her medical conditions and physical health. For example, the Applicant's spouse mentions in her statement that she experiences blackouts and dizziness, that these conditions have led to injuries, and that, because of these symptoms, her family ensures that someone is always home with her. However, her primary care physician's statements mainly focus on her mental health, rather than any current physical ailments, and do not mention that she suffers from blackouts or dizziness or that he has recommended that she receive constant supervision or monitoring. While her physician expresses concerns that the spouse's depression will worsen if the Applicant is required to leave the country, he does not further elaborate on how this would impact treatment of her medical conditions or the expected impact on her overall health and well-being. The record reflects that the Applicant's spouse has been willing and able to access medical attention and treatment in the United States and does not indicate whether or how this access would be impacted if the Applicant must depart.

The record also contains psychological evaluation reports from several mental health professionals, including: a brief statement, dated in 2014, from an India-based doctor who indicates he has treated the Applicant's spouse for depression; a 2009 evaluation prepared by a licensed clinical psychologist,

along with an addendum prepared in 2013; an October 2012 psychiatric evaluation prepared by a doctor whom the Applicant's spouse identifies as her current and long-time psychiatrist; and a November 2019 evaluation from a licensed psychologist who saw the Applicant's spouse on one occasion.

The Applicant's spouse indicates that she has an established relationship with a psychiatrist whom she has been seeing monthly for treatment for many years and continues to see regularly. Based on this long-term relationship, we note that her own doctor would reasonably be in the best position to describe her current condition, treatment, response to treatment, and prognosis. However, the evaluation from the spouse's psychiatrist is handwritten and largely illegible, in addition to being considerably outdated, as it was prepared eight years prior to the filing of the waiver application.

The psychologist who evaluated the Applicant's spouse in 2019 indicates that she suffers from major depressive disorder, an anxiety disorder with panic attacks, and a persistent somatic symptom disorder that interferes with her functioning, exacerbates her depression and anxiety, and makes her less able to care for herself and to participate in routine activities such as shopping, cooking, and cleaning. The psychologist describes her as having underdeveloped coping skills that make her overly dependent on others, such that she always requires a family member to remain home with her. It is not clear from this evaluation or other evidence in the record that this level of supervision has been medically recommended or imposed by one of the Applicant's spouse's doctors or whether it is simply a precautionary measure that the family has opted to take. The psychologist mentions that the family does not leave her unattended because they are concerned that she will have a medical or mental health crisis, noting that she had a suicide attempt many years ago but has no current expressed intent. In discussing the possible consequences of the Applicant's removal to India, the psychologist mentions that his spouse is dependent on him for financial and emotional support, and that it is "not guaranteed" that the couple's two adult sons (who still reside at home) would be able to provide the same level of support if their father must leave the country. She also indicates that it would be difficult for the Applicant's spouse to feel like she is a burden on her children and that this could exacerbate her depression and anxiety. The psychologist describes the spouse's psychological functioning as "tenuous at best" and states that she could be "at severe risk" if the system the family has in place to support her does not remain intact.

We acknowledge the statements from the Applicant's spouse and family members regarding the emotional and psychological difficulties that separation from the Applicant would cause her as well as documentation of her previous psychiatric treatment. On appeal, the Applicant places significant emphasis on his spouse's mental and emotional state, noting that the Director did not give sufficient weight to his spouse's age (62 years old), the nature of their relationship (a 35-year marriage), his responsibility for her support and her resulting dependence on him. While we acknowledge that a qualifying relative's disability may be weighed heavily when making an extreme hardship determination, the evidence here does not establish that the spouse's constant supervision has been mandated by her condition or ordered by her physician or psychiatrist, or that there is no available or obtainable substitute for the support system the family currently has in place. The Applicant's children submitted affidavits indicating that they expect to live independently from their parents, that they have or will have their own families, and that they therefore believe that their father is the best option to serve as their mother's primary source of emotional, physical, and financial support. However, the record reflects that the Applicant's spouse has two adult children and a daughter-in-law residing in her home, a sister-in-law and

nephew who live nearby, another adult child who lives in the United States, and other U.S. resident family members who have supported her in the past. While her support system would necessarily change if the Applicant must depart the United States, the record does not reflect that she would be left without emotional and physical support or that the separation from her spouse would severely impact her so long as she receives assistance from her family and continues her medications and regular counseling.

With respect to the economic detriment that the Applicant's spouse would face upon separation, we note that the Applicant submitted little evidence related to the family's current financial circumstances. Notwithstanding the couple's declaration of bankruptcy in 2012, the record indicates that they currently own a home and a profitable business. The record does not otherwise document the couple's current financial assets, nor has the Applicant mentioned his plans for the trucking business that he partially owns if he is required to depart the United States. The company's tax return indicates that the business is co-owned (50%) by another unidentified individual and absent evidence to the contrary, it appears that it could continue operating and generating income in the Applicant's absence. Further, while the record supports the Applicant's assertion that he is currently the sole income earner in the marriage, the evidence does not establish that the Applicant's three adult children would be unable or unwilling to provide their mother with financial assistance, if needed.

We acknowledge the anxiety the Applicant's spouse has experienced because of the Applicant's immigration status and the prospect of separation from him, and the potential strain in the family's financial circumstances. However, as noted, it appears the Applicant's spouse will continue to have access to medical and mental health treatment if she remains in the United States. Further, the record demonstrates that the Applicant's spouse has a close relationship with her adult children, and other family members and otherwise has a strong support network in the United States. We are sympathetic to the family's circumstances, but even considering all the evidence in its totality, the record remains insufficient to show that the aggregated financial, physical, psychological and emotional hardships of separation would be unusual or atypical to the extent that they 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 in order to establish his statutory eligibility for a waiver under section 212(i) of the Act. As he has not demonstrated this statutory eligibility, no purpose would be served in addressing the Director's separate determination the record does not demonstrate that he merits a waiver as a matter of discretion.[1] Accordingly, the waiver application remains denied.

ORDER: The appeal is dismissed.

[1] *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"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).