U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22679926

Date: NOV. 2, 2022

Appeal of Los Angeles 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 (LPR) 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 misrepresentation of a material fact. The Applicant filed this Form I-601, Application to Waive Inadmissibility Grounds (waiver application) as an accompanying form to a motion to reopen his adjustment application. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Los Angeles Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility. The Director concluded the Applicant did not establish extreme hardship to their U.S. citizen spouse, their only qualifying relative. The matter is now before us on appeal. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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

A 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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility ground 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. If the foreign national demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

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).

Once the foreign national demonstrates the requisite extreme hardship, they must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N 296, 299 (BIA 1996).

II. ANALYSIS

A. Immigration History

The Applicant entered the United States multiple times without being inspected, admitted, or paroled in the late 1980s and early 1990s. Additionally, during the Applicant's last admission to the United States, he presented himself to hold a permanent resident status and the immigration officer stamped his passport with an Alien Documentation Identification Telecommunication (ADIT) stamp.[1] However, the Applicant was not entitled to that permanent resident status, meaning he is inadmissible for that act under section 212(a)(6)(C)(i). Also during the mid-1990s, the Applicant filed an asylum application, but failed to appear for his interview and the application was considered abandoned.

We note that the Applicant's misrepresentations to service officers extends beyond simply committing fraud when entering the United States in the late 1990s. The Applicant appears to have continued to provide false information to agency officers even at his adjustment interview before the Director in June 2021. During that interview, the Applicant provided the officer with false information regarding whether he had ever filed for asylum in the United States. The Applicant stated he had not filed for asylum, but the record contains his abandoned 1996 asylum application. The Applicant does not contest that he is inadmissible as described above.

B. Extreme Hardship

The Applicant claims his spouse (R-C-),[2] his only qualifying relative, would experience extreme hardship if he is denied admission as an LPR and they are either separated with R-C- remaining in the United States, or they both relocate to Mexico or Honduras. The Applicant claims R-C-'s hardships would come in the form of medical, psychological, financial, familial and other ties to the United States, as well as the country conditions of R-C-'s and the Applicant's countries of birth.

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[1] An ADIT stamp was used by the former U.S. Immigration and Naturalization Service, and now U.S. Customs and Border Protection, at U.S. ports of entry to show that a foreign national has been admitted for lawful permanent residence. The stamp could be used as a valid entry document until the lawful permanent resident card was received. The stamp was proof of legal status for employment.

[2] We use initials to protect identities of involved parties to the case.

After reviewing the entire record, for the reasons set out below, we have determined that the Applicant has not demonstrated that his qualifying relative would experience extreme hardship if he were denied admission as an LPR. In their decision, the Director thoroughly discussed the Applicant's failure to demonstrate the hardships R-C- would experience rose to the requisite level. Upon consideration of the entire record, including the evidence submitted and arguments made on appeal, we adopt and affirm the Director's ultimate determination with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623, 624 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994)); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

We begin addressing a procedural issue the Applicant considers to be an error on the Director's part. The Applicant identifies a June 9, 2021, USCIS Policy Alert instructing officers to issue a request for evidence (RFE) or notice of intent to deny (NOID) before denying an application where there is a possibility the filing party can overcome a finding of ineligibility.

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) provides: "If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS." Therefore, the Director is not required to issue an RFE in every potentially deniable case. The regulation at 8 C.F.R. § 103.2(b)(8) does not require solicitation of further documentation, as long as the missing or inadequate evidence is included as initial evidence within the regulation governing the classification or the form instructions.

The policy alert the Applicant provides on appeal was incorporated into the *USCIS Policy Manual* at 1 *USCIS Policy Manual*, E.6, https://www.uscis.gov/policymanual. The *USCIS Policy Manual* does not support the Applicant's position that the Director was required to issue an RFE or a NOID on the waiver application. It states: "Generally, USCIS issues written notices in the form of an RFE or NOID to request missing initial or additional evidence from benefit requestors. However, USCIS has the discretion to deny a benefit request without issuing an RFE or NOID." 1 *USCIS Policy Manual*, *supra*, E.6(F). The term "generally" doesn't make the issuance of a notice mandatory and the *USCIS Policy Manual* provided the Director with the discretion to deny the waiver application without an RFE or NOID. So, while we acknowledge that the *USCIS Policy Manual* encourages agency officers to issue RFEs and NOIDs, it does not mandate it. And, the Director's decision not to issue such a notice was not in direct breach of USCIS policy as the Applicant contends on appeal.

We do, however, agree with the Applicant's appellate arguments on an issue relating to country conditions in which they point out in the decision the Director downplayed adverse conditions ranging from economic, to criminal, to terrorism. The Director indicated these conditions occur in all countries in contemporary times, to include the United States. This appears to downplay the conditions in a foreign country that while they may also be present in the United States, they are present at a much different level and scale.

While we do not subscribe to the Director's country conditions analysis, it does not appear to have the effect that it might change the Director's extreme hardship determination. R-C- has no family ties to the Applicant's home country in Mexico or in her birth country of Honduras. They submitted country conditions reflecting portions of both countries are associated with violent crime and poverty, which is represented within U.S. State Department travel advisories. Had the Director only provided a short analysis of the Applicant's other claims and evidence, the manner in which they downplayed the country conditions claims might warrant a remand for the issuance of a new decision. But a review of the Director's decision reveals they fully considered and weighed the remaining eligibility claims and we are not persuaded that the Applicant's country conditions claims on appeal warrant such a remand.

Within the appeal, the Applicant also indicates he was presenting the qualifying relative's children, both biological and adopted, as evidence of her strong family ties in the United States, but the Director mistakenly considered the existence of the children as other qualifying relatives. It is not clear that the Director ignored the existence of R-C-'s children when they evaluated the hardship claims. The Director noted the Applicant cannot claim any type of hardship to the children. But they also stated that the uprooting and separation from family represents the type of hardship experienced by most foreign nationals and their families in the event of a removal from the country. We see no error on the Director's part as it relates to their claims of R-C-'s ties to the United States.

We note the Director did not factor in the death of one of R-C-'s adult-aged children. The appeal brief explains this has added to R-C-'s mental and medical issues. While this is expected to add to the adversities R-C- is experiencing, the Applicant has not adequately explained how it exacerbates her situation such that it would result in extreme hardship either individually or considered with the other hardship claims.

Next, the Applicant claims that the Director ignored R-C-'s long history of illness and suffering and instead focused on contradictions in the record relating to her medical problems. The Applicant notes some of the contradictions appear to result from her history of misdiagnosis, her strange and unexplained pain and symptoms, and the conflicting information she receives in response to questions from the examining physician. As it relates to any perceived contradictions, it is an applicant's responsibility to resolve any contradictions in the evidence or their claims. And even though the Applicant indicates the Director focused on contradictions, they don't list those inconsistencies and accompany that with explanatory or corroborating evidence to establish their claims. Such a shortcoming frustrates the Applicant's ability to meet their burden of proof as it relates to this issue on appeal.

The Applicant's remaining appellate claims (e.g., R-C-'s family ties within the United States and the lack of them outside this country, the financial impact of departing from the United States, and the impact of R-C-'s separation from the Applicant, etc.) were considered by the Director who declined to find them to individually or collectively establish R-C- would experience hardship at the requisite level. Only restating these claims without explaining how the Director may have committed a prejudicial error in their analysis is inadequate to prevail within the appeal.

We close discussing the accusation in the appeal brief questioning the fairness of the Director's denial, characterizing it as written with "enthusiasm and fervor" to prove an argument rather than providing

an unbiased review of the record. While we do not necessarily agree with the Director's tone in every portion of the decision, we do not disagree with their statement of facts nor their ultimate determination. And we would not describe any portion of the decision—even those portions where we do disagree with their tone—as having been crafted with bias, enthusiasm, or fervor.

What is required is that the previous trier of fact consider the issues raised and announce its decision in terms sufficient to enable an appellate body to perceive that it has heard and thought and not merely reacted. *Rodriguez-Jimenez v. Garland*, 20 F.4th 434, 439 (9th Cir. 2021) (quoting *Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010); *Farah v. U.S. Att'y Gen.*, 12 F.4th 1312, 1329 (11th Cir. 2021); *see also Osuchukwu v. INS*, 744 F.2d 1136, 1143 (5th Cir. 1984). If evidence is highly relevant, the adjudicating body must at least acknowledge that evidence, either implicitly or explicitly, in its decision. The decision must create the conviction that it "considered and reasoned through" the highly relevant evidence. *Farah*, 12 F.4th at 1329 (citing *Ali v. U.S. Att'y Gen.*, 931 F.3d 1327, 1331 (11th Cir. 2019)). We conclude the Director met this standard here.

And had the Director not met that standard, this appeal was the Applicant's opportunity to describe specific instances in which the Director ventured too far off the beaten path. The denial decision was adequately presented to afford him the opportunity to file a meaningful appeal, to rebut the Director's findings, and to identify errors the Director committed. But aside from the country conditions error we acknowledged above, the appeal brief lacks much of these elements that might persuade us to find in the Applicant's favor.

Ultimately, we do not agree with the Applicant that they have demonstrated the required level of hardship through the previously submitted evidence and the new claims on appeal. That is what is required to establish eligibility for a section 212(i) waiver. As the Applicant has not demonstrated the requisite extreme hardship, no purpose would be served in determining whether he merits the waiver as a matter of discretion. Based on our determinations above, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and even though the record demonstrates R-C- would experience hardships if he were denied admission, the Applicant has not established he warrants a waiver of that inadmissibility ground. As a result, the waiver application remains denied.

ORDER: The appeal is dismissed.