U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23051963

Date: NOV. 03, 2022

Appeal of Newark, New Jersey 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 the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i).

The Director of the Newark, New Jersey Field Office, denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant did not establish that denial of the application would result in extreme hardship to her qualifying relative, her U.S. citizen spouse. On appeal, the Applicant asserts that the Director's decision contained factual errors and failed to consider all the evidence and hardship factors presented. The Applicant asserts that she has met her burden of demonstrating that her spouse would suffer extreme hardship and that she merits a waiver as a matter of discretion.[1]

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). We review 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 remand the matter to the Director for further proceedings.

I. LAW

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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or LPR spouse or parent of the noncitizen. If the noncitizen demonstrates the existence of the required hardship, then they must also show that U.S. Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

[1] The record indicates that the Applicant filed an adjustment of status application based on an approved visa petition filed by her U.S. citizen spouse.

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

Upon review of the record in its totality, we will remand the matter to the Director for further review and issuance of a new decision.

On appeal, the Applicant does not contest her inadmissibility under Section 212(a)(6)(C)(i) of the Act for fraud and willful misrepresentation. However, the Applicant contends that the Director did not sufficiently explain why the evidence submitted with the waiver application did not establish extreme hardship to her U.S. citizen spouse. Specifically, she asserts that the Director failed to consider all the evidence she presented, and in doing so, failed to properly conduct an extreme hardship analysis according to the adjudicative guidance provided in the *USCIS Policy Manual*. The Applicant further emphasizes that the Director was inappropriately dismissive of a psychological evaluation submitted for her spouse and erroneously observed that the psychologists' report "did not include a diagnosis." She also maintains that the decision appeared to be biased based on the denial of two prior waiver applications and notes that certain language appeared to be copied from earlier USCIS decisions. The Applicant emphasizes that the instant application was accompanied by new evidence in support of the extreme hardship claim, and asserts that much of the evidence was not addressed by the Director.

The Applicant also claims that the Director erred by not addressing the extreme hardship her spouse would experience if he were to relocate with her to Peru. 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/policymanual. Here, the statement from the Applicant's spouse does not indicate whether he would remain in the United States, separated from her, or whether he would relocate with her to Peru in the event that the waiver application is denied. Therefore, the Applicant must establish that if she is denied admission, her spouse would experience extreme hardship upon both relocation and separation.

Nevertheless, we agree with the Applicant that the record does not establish that the Director properly considered all evidence relevant to the extreme hardship claim. The regulation at 8 C.F.R. §

103.3(a)(1)(i) states that when denying an application or petition, the Director shall explain in writing the specific reasons for denial. Further, when denying an application, the Director must fully explain the reasons in order to allow the Applicant a fair opportunity to contest the decision and provide the AAO an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal).

One of the few documents addressed in the decision was a psychological evaluation and treatment summary prepared by two psychologists who evaluated the Applicant's spouse over several sessions in 2019. The Director's decision reflects that little or no weight was given to this written evaluation, in part based on a finding that it contained "no formal diagnosis of mental status" and based on a suspicion that the information provided by the was "biased" because it discussed how the Applicant's immigration status may impact her spouse. The Director also appeared to impose a requirement that the evaluation report be notarized. We observe that the evaluation does in fact contain the psychologists' diagnostic findings and indicates that the spouse was diagnosed with major depressive disorder and separation anxiety disorder. The Director had insufficient basis to dismiss the probative value of this evidence.

The Director's decision also attributes to the Applicant's spouse a statement that the Applicant is his "primary care giver" due to various medical conditions. The Director stated that this claim "lacks merit" because the spouse indicated during an interview in November 2020 that he was working as a truck driver. However, a review of the affidavit submitted in support of this application reflects that the Applicant's spouse did not in fact claim that the Applicant is his "primary care giver," nor did he claim that he was no longer able to work as a truck driver. The Applicant's spouse indicated that he had reduced his driving hours due to the physical toll it takes and was working a second job, but he did not claim that he was physically unable to work. This error raises questions as to whether the affidavit, the hardship factors discussed therein, and the attached supporting evidence, were fully considered.

The record also reflects that the Applicant's spouse indicated that he would experience financial hardship if the waiver application is denied, and the Director did not address this claim, or the financial evidence submitted, which include tax returns, wage and tax statements, bank records, and a lease agreement. Again, when denying an application, the Director must fully explain the reasons in order to allow the Applicant a fair opportunity to contest the decision and provide the AAO an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786.

Accordingly, we will withdraw the Director's decision and remand the matter to the Director to consider and discuss all evidence and hardship factors presented. Upon remand, the Director may request any additional evidence considered pertinent to the new determination and any other issue to determine in the first instance if the Applicant has established extreme hardship to her spouse and merits a favorable exercise of discretion.

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