U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 13531558

Date: NOV. 18, 2022

Appeal of Washington Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i), for fraud or misrepresentation.

The Director of the Washington Field Office, Fairfax, Virginia, denied the waiver, concluding that the record did not establish the Applicant's qualifying relative, her permanent resident spouse, would experience extreme hardship if the waiver is not granted.

On appeal, the Applicant does not contest the finding of inadmissibility, which is supported by the record.[1] She contends that her spouse will experience extreme hardship if her waiver is denied and submits hardship evidence in support of her claims.

In these proceedings, it is the Applicant's burden 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). Upon *de novo* review, we will dismiss the appeal.

## 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. 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)

[1] The Applicant, a citizen of Mexico, admits that when applying for a U.S. visa in 2012 she did not disclose her unlawful entry into the United States in 2010. Although the Applicant claims the error was a miscommunication between her and the attorney who assisted with the application, she accepts responsibility for "entering the United States without proper paperwork and [] fail[ing] to properly fill out the H-4 visa application form."

(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

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 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 record is inconclusive as to whether the Applicant's qualifying relative, her spouse, would remain in the United States or relocate to Mexico if the waiver application is denied.[2] The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation. In the discussion at hand, we will focus on whether the Applicant demonstrated that her spouse would experience extreme hardship upon relocation.

With the waiver application, the Applicant provided sworn declarations from herself and her spouse, the latter of whom immigrated from Mexico in 2012 and became a lawful permanent resident in 2019. In their respective declarations, the couple stated that they would have extreme difficulty finding work and a means to financially support themselves and their child if they were to relocate to Mexico. The Applicant's spouse pointed out that in the eight years he has resided in the United States, he has advanced in his career. He is fearful that returning to Mexico would result in having to give up that career and chance of a well-paying job in his profession, which he claims would lead to extreme financial hardship. Although the Applicant points out that Mexico's economy is weaker in comparison to the United States and asserts that her spouse's income would be significantly reduced if he were to relocate to Mexico, she has offered no evidence, such as prospective rental costs or living expenses, about the cost of living in Mexico, nor has she provided evidence that she and her husband would be unable to secure employment and suitable housing if they relocate. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The fact that the Applicant was employed in Mexico when she became acquainted with her husband undermines her claim that she has no work experience in Mexico. Further, given that the

[2] Neither the Applicant nor her spouse clearly conveys the spouse's intent to either separate from the Applicant or relocate with her to Mexico. Rather, both individuals discuss the possibility of separation and relocation, thereby precluding a determination as to the spouse's intent to separate from or relocate with the Applicant if the waiver application is denied.

Applicant and her spouse both resided in Mexico well into adulthood and were both employed there, it is reasonable to assume that they could find employment once again and have the means to pay for daily essentials, such as food and a place to live. In sum, the Applicant has not established that her spouse would experience extreme financial hardship upon relocation.

Regarding medical hardship, the Applicant and her spouse provided declarations discussing the Applicant's spouse's physical and psychological difficulties. Namely, they stated that the Applicant's spouse has type 2 diabetes and requires daily care in terms of monitoring his blood sugar and preparing food that is consistent with a medically prescribed diet. The Applicant further claimed that if her husband "fails to get the right food, his diabetes will kill him." Although the Applicant provided a letter from her spouse's physician confirming that he has type 2 diabetes and is being monitored for hypertension, the letter does not corroborate the emergent tone of the Applicant's claim, nor does it outline a recommended course of treatment, such as a particular diet or pharmaceutical intervention. Further, while both the Applicant and her spouse state that the Applicant is critical in addressing the spouse's healthcare needs, such care could continue uninterrupted if the Applicant's spouse were to relocate with her to Mexico. Although the Applicant submitted an article that discusses deficiencies in Mexico's healthcare system, the article is from June 2016 and does not specifically mention [redacted] the Applicant's spouse's hometown where he stated he would relocate. The Applicant also provided a travel advisory showing that [redacted] was assessed as a general "Level 2: Exercise Increased Caution." The report identified five locations on the "Do Not Travel To" list and 11 locations on the "Reconsider Travel To" list, but neither list included [redacted] In light of the evidentiary deficiencies noted above, the Applicant has not established that her spouse would suffer extreme physical hardship upon relocation.

As noted earlier, the Applicant and her spouse also stress their concern over the spouse's anxiety disorder, claiming he suffers from fear and worry that could rise to a life-threatening level as a result of the uncertainty of the Applicant's immigration status. However, both the Applicant and her spouse focused on the psychological hardships to the spouse in the event of a separation and did not adequately address the effects of the Applicant's spouse relocating to Mexico. The Applicant also states that it would be "highly difficult" for her husband to leave the United States and further claims that "[h]is personal integrity, dignity and moral obligation will also be injured" if he were to relocate to Mexico; she states that his emotional pain is "beyond most other spouses of inadmissible foreigners." However, the Applicant does not establish that her spouse's psychological hardship would rises to the level of extreme.

Further, despite the Applicant's spouse's claim that he "may one day become insane" without therapy and that he has had an ongoing mental health condition for years, the only evidence that the Applicant's spouse has sought help for any mental health issues is in the form of a letter from a physician whom the spouse saw approximately two weeks after the instant waiver application was denied. The letter states that the Applicant's spouse was prescribed various medications for depression, anxiety, and insomnia "due to [his] wife's upcoming scheduled deportation." However, it is unclear that the spouse previously reported his mental health concerns to a physician nor did the prescribing physician specifically diagnose the spouse with depression and anxiety. Aside from this July 2020 letter, there is no other evidence that the Applicant's spouse sought the help of a mental health professional or that he was otherwise treated for his anxiety disorder during his eight-year residence in the United States. Rather, the only evidence of any involvement from a mental health professional is in the form of an

evaluation report from a licensed clinical professional counselor, whose assistance the Applicant sought in the course of this waiver application process. Although the report from the licensed counselor states that the Applicant's spouse "reported that he has been struggling with symptoms of anxiety for several years since his wife developed health problems," the Applicant provided no evidence that her husband attempted to address those concerns at any prior time. Likewise, the record lacks evidence to support the Applicant's claim that her husband is "waiting for appointments for more medical help to treat his mental disorder." As previously stated, the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

We further note that the report from the licensed counselor focuses on the psychological effects to the Applicant's spouse upon separation, noting that "his symptoms have worsened by the possible separation from his spouse." The counselor did not conclude that relocating with the Applicant to Mexico would have a similar effect on the spouse's mental health. In fact, the counselor pointed out that the spouse "has limited support outside his wife" and also "lacks family in the area," issues that may be addressed if he were to relocate to Mexico, where he could remain with the Applicant and reunite with his parents who continue to reside there. Many of the fears and concerns discussed in the psychological evaluation are directly associated with the Applicant's spouse's fears of separating from his wife and having to become a single parent to their son. However, the Applicant did not establish that relocation would raise these same issues.

In addition, while the Applicant provided an article regarding deficiencies in the treatment of mental health in Mexico, the article does not address outpatient therapy, but rather focuses on conditions in mental health facilities. It therefore does not appear that this article is relevant to the Applicant's spouse or the condition with which he has been diagnosed. Further, despite the Applicant's spouse's anxiety about the possibility of relocating to Mexico and the uncertainty about getting a job and a place to live, the record shows that, with the exception of the eight years leading up to the filing of the instant waiver application, the spouse resided in Mexico until his departure in 2012. Thus, while it is foreseeable that relocating to Mexico may present some difficulty, we cannot conclude that such difficulty would rise to the level of extreme hardship.

On appeal, the Applicant reiterates the arguments that were previously raised regarding her spouse's mental health concerns, highlighting the general anxiety diagnosis made by the above-referenced licensed counselor. She also reiterates the "extreme emotional pain and suffering" her spouse would endure by having to relocate to a country with a high crime rate. However, the Applicant has not provided documentation establishing the hardships her spouse specifically experienced in Mexico, his native country where he resided until he was approximately 47 years old. As such, the Applicant has not offered sufficient evidence to support the contention that a return to Mexico would cause him extreme hardship.

Lastly, regarding the couple's son, we note that his hardship may only be considered to the extent that it causes hardship to the Applicant's spouse. In this instance, the couple's son was nine years old at the time this application was filed. Although the Applicant provided evidence showing that he was assigned an individualized education program (IEP), the record contains a notice of reevaluation, which shows that eligibility for the IEP is subject to change. The Petitioner did not provide evidence establishing that the couple's son continues to be eligible for an IEP or that he would have a continuing

need for such a program upon relocation to Mexico. Moreover, aside from claiming that his child "will face a lot of hurdles in his development from a child to an adult in Mexico," the Applicant's spouse did not specify the hurdles or the nature of the hardship he himself would experience, keeping in mind that extreme hardship of the qualifying relative is the focus of establishing eligibility for this waiver. The Applicant's broad statement that "[t]his sense of guilt is hurting me emotionally" is, however, not sufficient to establish that the hardship to the spouse rises to the level of extreme.

The evidence in the record is insufficient to establish that the Applicant's spouse's hardships upon relocation, considered individually and in the aggregate, would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship. The record does not establish that relocation would affect the Applicant's spouse's ability to function in his daily life to such an extent that it would cause him extreme hardship.

As previously noted, the record is inconclusive as to whether the Applicant's spouse, would remain in the United States or relocate to Mexico if the waiver application is denied. The Applicant must therefore establish that denial of the waiver application would result in extreme hardship to her spouse upon both separation and relocation. Because the Applicant has not established extreme hardship to her spouse in the event of relocation, we cannot conclude she has met this requirement, and we need not determine whether extreme hardship upon their separation has been established. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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-*, 16 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where a petitioner or applicant is otherwise ineligible).

**ORDER:** The appeal is dismissed.