U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23051907

Date: NOV. 30, 2022

Appeal of Phoenix, Arizona Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Vietnam, 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. The Director of the Phoenix, Arizona Field Office denied the waiver application, concluding that the Applicant did not establish that her qualifying relative would suffer extreme hardship if she were to depart the United States and that a favorable exercise of discretion is not warranted.

On appeal, the Applicant submits a brief and contends that the Director did not consider hardships in the aggregate, including hardships to nonqualifying relatives. The Applicant also contends that the Director failed to consider all the equities in determining that her waiver should not be granted as a matter of discretion.

The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). In these proceedings, it is the applicant's burden to establish eligibility for the requested benefit by a preponderance of 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

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), renders inadmissible 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, admission into the United States, or other benefit provided under the Act. Section 212(i) of the Act provides for 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.

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 was found inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act for misrepresenting a material fact to the U.S. Department of State and U.S. Citizenship and Immigration Services (USCIS). The Applicant does not contest this determination on appeal, and it is supported by the record. Thus, the remaining issues on appeal are whether the Applicant has demonstrated that her U.S. citizen spouse will suffer extreme hardship if the inadmissibility is not waived, and if so, whether she merits a waiver as a matter of discretion.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case, the Applicant's U.S. citizen spouse. 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. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (providing, as guidance, the scenarios to consider in making extreme hardship determinations). 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. *See id.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002)). 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. *See id.* In the present case, the record does not contain a statement to indicate that the qualifying relative intends to remain in the United States or relocate to Vietnam. The Applicant must, therefore, establish that if she is denied admission, her qualifying relative would experience extreme hardship both upon separation and relocation.

On appeal, the Applicant asserts that the aggregate effect of psychological, medical, and financial hardships to her qualifying relative and nonqualifying relatives is extreme hardship that is not typical of either separation or relocation. Upon review of the record in its totality, we conclude that the record does not establish that the claimed psychological, medical, and financial hardships to the qualifying relative, considered individually and in the aggregate, rise to the level of extreme hardship.

The Applicant and her U.S. citizen spouse were married in 2018, the Applicant has a son from her prior marriage, and the Applicant's spouse has a daughter from his prior marriage. The record reflects in April 2021, two immigration officers of USCIS conducted an unannounced site visit at the claimed marital residence in Arizona and discovered that the Applicant has resided with her son in California while her spouse has resided in Arizona with his daughter since February 2020.

Regarding medical hardship, the Applicant's spouse stated that because he is so worried that the Applicant will have to return to Vietnam, it is hard for him to concentrate, he has a difficult time falling

asleep, and he wakes up often in the middle of the night. The Applicant's spouse also stated that the panic depression and anxiety that he is experiencing because of the Applicant's immigration problem is causing him stomach ulcers. To support this claim, the Applicant submitted two letters from a medical center, which state that the Applicant's spouse was examined by his family doctor three times in 2021 for evaluation of insomnia and abdominal discomfort and that he was provided a follow-up plan and referred to a gastroenterologist for further evaluation and management. The Director determined that the Applicant's spouse's medical issues did not rise to the level of extreme hardship.

On appeal, the Applicant asserts that her spouse's inability to sleep and his stomach ulcers are increasing his anxiety and depression. The Applicant further asserts that if her waiver application is denied, her spouse would not be able to work or take care of his family because both relocating to Vietnam with the Applicant and remaining in the United States without the Applicant will likely destroy her spouse's health. However, the medical documentation in the record is insufficient to substantiate these claims. The record does not indicate the severity of the Applicant's spouse's current medical issues. The record also does not indicate that the Applicant's spouse will be unable to work or take care of his family without assistance from the Applicant. Without more detailed information and corroborating documents that establish the severity of the spouse's medical condition, treatment, or assistance needed, we are unable to determine that the Applicant's spouse would experience physical or medical hardship due to separation or relocation. We also note that the Applicant has resided and worked in California while the Applicant's spouse has resided and worked in Arizona since 2020, and this undermines the claim of extreme hardship in the event of separation.

Regarding emotional and psychological hardships, the Applicant submitted her spouse's psychological evaluation report from a licensed psychologist. This report stated that the Applicant's spouse was diagnosed with adjustment disorder with mixed anxiety and insomnia disorder. The psychologist recommended that the Applicant's spouse (1) pursue training in cognitive behavior therapy for insomnia and (2) explore healthy outlets for his emotions, such as talking with his trusted friends and family members, physical exercise, healthy eating, and practicing diaphragmatic breathing. The Director noted that since the psychologist stated in her report that the Applicant's attorney suggested that the Applicant's spouse participates in a psychological evaluation to support the Applicant's immigration case, it appeared that this evaluation was obtained solely for immigration purposes. The Director also found that since the Applicant and her spouse have resided separately, the Applicant and her spouse appeared to be capable of emotionally maintaining two households as well as being physically separated.

On appeal, the Applicant repeats that the Applicant's spouse was diagnosed with adjustment disorder with mixed anxiety and depressed mood and insomnia disorder. However, the record does not contain any treatment plan for the spouse's diagnosis, ongoing sessions with the psychologist, or other sufficient evidence to indicate whether the spouse needs daily assistance due to his diagnosis. The evidence in the record does not establish that the emotional effects of separation from the Applicant would be more serious than the type of hardship normally suffered when one is faced with the prospect of separation from one's spouse. Although the depth of the Applicant's spouse's distress regarding the prospect of his separation from the Applicant is not in question, a waiver of the inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon separation.

Regarding other personal hardship to the Applicant's spouse relating to his father, the Director noted that the Applicant's sister-in-law appeared to be the primary caretaker for her father-in-law. The Director found that the issues addressed by the Applicant's spouse relating to his father did not establish that the Applicant's spouse would suffer extreme hardship.

On appeal, the Applicant asserts that her 82-year-old father-in-law relies on her to help him with chores and errands every weekend and also for companionship. However, the record does not contain sufficient evidence to support this claim. In addition, for a waiver of the inadmissibility, a qualifying relative is the U.S. citizen or LPR spouse or parent. The Applicant's father-in-law is not a qualifying relative. However, we consider any hardship that the qualifying relative may experience as a result of hardships to other nonqualifying relatives. Here, the record does not contain sufficient evidence to establish that the Applicant's father-in-law relies on the Applicant for his medical treatment or daily activities and that her absence would impose an extreme hardship on the Applicant's spouse. Furthermore, the record does not indicate that the Applicant is the sole source of assistance available to her father-in-law for his daily activities because it appears that the Applicant's sister-in-law takes care of the Applicant's father-in-law during the week and is the primary caretaker of him, according to the Applicant and her spouse.

Regarding other personal hardship to the Applicant's spouse relating to his daughter, the Director found that the issues addressed by the Applicant's spouse relating to his daughter did not establish that the Applicant's spouse would suffer extreme hardship.

On appeal, the Applicant asserts that if her spouse decides to remain in the United States without her, her stepdaughter will suffer because her spouse's ability to support his daughter will be diminished as he will be consumed by his own grief. The Applicant also asserts that seeing her father depressed and heartbroken again will trigger her stepdaughter's memories of when her mother abandoned her after the divorce and that her stepdaughter's mental health will suffer, causing the Applicant's spouse's mental health to further deteriorate. For a waiver of the inadmissibility, a qualifying relative is the U.S. citizen or LPR spouse or parent. The Applicant's stepchild is not a qualifying relative. However, we consider any hardship that the qualifying relative may experience as a result of hardships to other nonqualifying relatives. Here, it has not been established that the Applicant's spouse would not be able to continue to provide his daughter with financial and emotional support if he resided in the United States without the Applicant or from a location outside the United States if he resided abroad with the Applicant. The record does not indicate that separation or relocation would cause the Applicant's stepdaughter hardship that would cause an extreme hardship to the Applicant's spouse.

Regarding financial hardship, the Applicant's spouse stated that he supports his family by running a nail salon in Arizona and that in Vietnam, he would not be able to find work as he would be discriminated against him because of his age, lack of education, time in the United States, and relationship with his father who worked for the U.S. army in Vietnam. The Applicant's spouse further stated that his father was imprisoned for years in Vietnam because he worked for the U.S. Army. The Director noted that since the Applicant and her spouse have resided separately, the Applicant and her spouse appeared to be capable of financially maintaining two households as well as being physically separated.

On appeal, the Applicant asserts that if the Applicant's spouse moved to Vietnam with the Applicant, the Applicant's spouse would suffer financial hardship because Vietnam's fragile economy has been devastated by the COVID-19 pandemic and because of high unemployment rate in Vietnam. However, the Applicant did not provide sufficient corroborating evidence. The Applicant repeats that her spouse would be unlikely to find a job that pays a livable wage due to his father's membership in the U.S. Army, his age, and gender discrimination in Vietnam. But the record does not contain sufficient corroborating evidence. The Applicant asserts that if her spouse chose to remain in the United States, her spouse would have to support her and her son indefinitely because she would be unable to find a job due to her father-in-law's previous work for the U.S. Army in Vietnam. However, it has not been established that either the Applicant or her spouse would be unable to find employment or make a living in Vietnam where both of them were born and raised and lived most of their lives. According to the Applicant, she previously worked as a public relations and marketing manager for a resort in Vietnam.

Collectively, the evidence the Applicant has submitted does not support that medical, emotional, psychological, financial, or other personal hardship would result in extreme hardship to her spouse in the event of separation or relocation. As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to her spouse upon both separation and relocation. While we are sympathetic to the family's circumstances, considering all the evidence in its totality, the record remains insufficient to establish that the aggregated financial, medical, psychological, and emotional hardships of separation and relocation would be unusual or atypical to the extent that they rise to the level of extreme hardship.

As the Applicant has not established extreme hardship to her spouse in the event of separation and relocation, we cannot conclude that she has met this requirement. On appeal, the Applicant contends that the Director erred in determining that since the Applicant did not establish extreme hardship to her spouse, she does not warrant a favorable exercise of discretion. The Applicant further contends that the law requires a balancing of both adverse and favorable factors.

In order to demonstrate eligibility for relief under section 212(i) of the Act, the applicant must establish that he or she is statutorily eligible for the relief requested by demonstrating that his or her qualifying relative(s) would suffer extreme hardship upon the applicant's removal in the scenario of separation and/or relocation. Once a determination is made on the applicant's statutory eligibility, we can then determine whether to exercise discretion in granting the waiver. The burden is on the applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 299 (BIA 1996). The Applicant states that she has many positive factors, including her employment, lack of criminal record, and payment of taxes. However, because the Applicant has not demonstrated extreme hardship to her qualifying relative if she is denied admission to the United States, we need not consider whether she merits a waiver in the exercise of discretion. Therefore, the waiver application will remain denied.

III. CONCLUSION

The Applicant has not established her statutory eligibility for the requested waiver under section 212(i) of the Act. Accordingly, the waiver application will remain denied.

ORDER: The appeal is dismissed.