U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23214195

Date: NOV. 30, 2022

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of South Korea, 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 Los Angeles, California Field Office denied the waiver application, concluding that the record does not support a finding that his spouse would experience extreme hardship should he be removed from the United States.[1]

On appeal, the Applicant submits a brief and contends that the Director misconstrued the facts and misapplied the law by looking at each hardship factor in isolation rather than in the aggregate. The Applicant further asserts that the Director abused her discretion in denying the Applicant's waiver application because the Director did not carefully consider all hardship factors.

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. at 375. 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

[1] The Director referenced an incorrect standard of proof in the decision, which stated; "[i]n order to qualify for an 'extreme hardship' waiver of [the] grounds of inadmissibility, [the Applicant's spouse] must demonstrate with clear and convincing evidence that [the Applicant's] removal from this country would force her to suffer above and beyond what every other United States citizen related to a removable alien would suffer." The standard of proving eligibility for a waiver is a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). However, this error is not determinative in the outcome of the Applicant's case because we conduct *de novo* review and conclude that the Applicant did not establish extreme hardship by a preponderance of the evidence.

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 using fraudulent arrival records when filing applications to 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 his qualifying relative will suffer extreme hardship if the inadmissibility is not waived, and if so, whether he 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 LPR 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 contains a statement from the Applicant's spouse, which states that if the Applicant is deported, she cannot go to Korea with him. She stated that she has lived in the United States for 20 years so the United States is her home and that she has no connections in Korea to make a living. The Applicant must, therefore, establish that if he is denied admission, his qualifying relative would experience extreme hardship upon separation.

On appeal, the Applicant contends that the Director misconstrued the facts and misapplied the law by looking at each hardship factor in isolation rather than in the aggregate. The Applicant contends that the Director disregarded all evidence without giving due weight and that all hardship factors presented by the Applicant should be considered in the totality of the circumstances in making the extreme hardship determination. Upon review of the record in its totality, we conclude that the record does not

establish that the claimed financial, medical, and emotional hardships, considered individually and in the aggregate, rise to the level of extreme hardship.

Regarding medical hardship, the Director acknowledged that the Applicant's spouse is under a doctor's care for diabetes, hypertension, and arthritis and is taking medication but found that her health is not a major issue because the Applicant's spouse assists the Applicant to operate their jewelry store. The Director noted that the Applicant's spouse did not provide any evidence demonstrating that her health has prevented her from working while taking care of her family.

On appeal, the Applicant asserts that his spouse suffers from arrhythmia, diabetes, hypertension, and severe pain in both knees and that his spouse's symptoms hinder her ability to function with normal daily activities, including simple daily tasks. However, there is insufficient medical documentation in the record to substantiate the claim that the spouse's symptoms hinder her ability to perform normal daily activities. There is, for example, no letter from a health care professional addressing the diagnosis, prognosis, treatment, or severity of the Applicant's spouse's medical problems. Without more detailed information, we cannot determine the severity of a medical condition or the treatment and assistance needed. The evidence does not indicate that the Applicant's spouse is medically reliant on the Applicant and that the Applicant's absence would impose an extreme hardship on his spouse.

Regarding financial hardship, the Director found that there is no mention of any challenges that would prevent the Applicant's spouse from operating their jewelry store by herself. The Director also noted that since the Applicant's spouse is currently working, the payment of their necessities, such as mortgage, food, gasoline, and utilities bills may not be an issue. The Director added that financial stress is common to many families with the main provider facing the possibility of deportation.

While the Applicant's spouse claims that she cannot run their jewelry store by herself, it has not been established that she would not be able to hire an additional employee who can help her operate the business. The evidence submitted is insufficient to show that financial hardship would rise to the level of extreme if the Applicant's spouse remained in the United States while the Applicant resided abroad.

Regarding emotional hardship, the Applicant submitted a psychological evaluation and treatment report from a licensed psychologist. The psychologist stated that because of the Applicant's immigration status, the Applicant's spouse is experiencing anxiety and depressive symptoms, she has lost appetite, and her sleep quality is poor. The report indicated that the Applicant's spouse was diagnosed with major depression, severe with anxiety. The psychologist saw the Applicant's spouse for four sessions in 2020 for treatment, which consisted of "supportive therapy and cognitive reframing," and recommended consulting with the spouse's physician regarding anti-depressant medications. The Director found that there is no evidence of the Applicant's spouse having taken any medication for her mental health.

On appeal, the Applicant asserts that due to the Applicant's immigration predicaments, the Applicant's spouse noticed worsening of her depressive and anxiety symptoms. The Applicant adds that his spouse finds herself anxious, stressed, and depressed. However, the record does not contain any treatment plan for the spouse's diagnosis, ongoing sessions with a psychologist or mental health professional, or other sufficient evidence to indicate whether the Applicant's spouse needs daily assistance due to her 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 her 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.

As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to his spouse upon separation. 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 would be unusual or atypical to the extent that they rise to the level of extreme hardship. On appeal, the Applicant contends that the Director abused her discretion by not issuing a request for evidence (RFE). However, the Applicant submitted supporting documents in support of his waiver application and the fact that the evidence in the record does not establish extreme hardship does not require the Director to issue a RFE for additional evidence.[2]

As the Applicant has not established extreme hardship to his spouse in the event of separation, we cannot conclude that he has met this requirement. On appeal, the Applicant contends the Director abused her discretion by not considering any of the 13 support letters written by those who are close to the Applicant and his spouse. The Applicant contends that the Director did not thoroughly analyze the discretionary factors in his case. The Applicant submitted letters that praise the Applicant's spouse as a kind, supportive, gentle, honest, caring, and generous person to her family, relatives, and friends, and recommend the Applicant and his spouse as a hard-working, diligent, nice, courteous, warm-hearted, and considerate couple to others. We acknowledge these letters, but because the Applicant has not demonstrated extreme hardship to his qualifying relative if he is denied admission to the United States, we need not consider whether he merits a waiver in the exercise of discretion. Therefore, the waiver application will remain denied.

III. CONCLUSION

The Applicant has not established his 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.

[2] *See* USCIS Policy Memorandum PM-602-0085, *Requests for Evidence and Notices of Intent to Deny*, https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/June%202013/Requests%20for%20Evidence%20%28Final%29.pdf.