U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22725679

DATE: OCT. 12, 2022

Appeal of Hartford, Connecticut Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of China, has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The Director of the Hartford, Connecticut Field Office denied the application, concluding that the record did not establish the Applicant's lawful permanent resident wife, the only qualifying relative, would experience extreme hardship if the waiver was not granted. On appeal, the Applicant argues that the Director's failed to appropriately examine the evidence provided and erred in the decision.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary 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. 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) (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 issue on appeal is whether the Applicant has demonstrated that his lawful permanent resident (LPR) wife would suffer extreme hardship upon denial of the waiver. The Applicant does not contest the finding that he misrepresented a material fact and obtained an immigration benefit for which he was not otherwise eligible. Specifically, he provided a false date of birth when seeking entry into the United States and obtained benefits as a juvenile that he would not have qualified for if he had provided his true date of birth. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

A. Extreme Hardship

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case, his LPR wife. 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 an applicant's evidence establishes 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. In the present case, the record does not contain a statement from the Applicant's wife indicating whether she intends to remain in the United States or relocate to China if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his qualifying relative would experience extreme hardship both upon separation and relocation.

In the initial filing, the Applicant himself did not assert that his wife would suffer hardship. Rather, he relied upon documentation submitted with the waiver application, including a statement from the Applicant's wife and U.S. citizen daughter, copies various bills and tax returns, as well as a psychological evaluation of his qualifying relative wife.

Although the Applicant did not provide his own statement, his qualifying relative wife contended that she relies upon the Applicant for financial and emotional stability. His daughter offered details concerning the support and love the Applicant provides the family and examples of his hard-working nature.

We examined the bills and tax documentation initially provided; however, it cannot be concluded from these documents that the qualifying relative wife could not financially support herself if she were separated from the Applicant. Furthermore, the documents do not support a finding that the Applicant and his wife are unable to meet their financial obligations.

We also examined the February 2021 psychiatric evaluation initially submitted; however, as the Director noted in her decision, the evaluation is missing pages 2, 4, 6, 8, and 10. Therefore, the Director determined that USCIS could not appropriately evaluate the contents of the evaluation. Based upon the pages provided, the evaluator noted the qualifying relative's claimed symptoms and provided

a diagnosis that she suffers from major depressive disorder (MDD); however, the evaluation does not contain a treatment plan. Because the evaluation is missing relevant information, it fails to support a finding that the qualifying relative would suffer extreme hardship if the Applicant's waiver application were denied. The Director acknowledged the qualifying relative's claim that she would suffer a great deal of anguish, pain, and emotional instability if she and the Applicant were separated. Nevertheless, the Director determined that such difficulties are the common result of separation and do not demonstrate extreme hardship.

On appeal, the Applicant relies upon the qualifying relative's assertions in her updated statement. These assertions include that she would experience medical, emotional, and financial hardship upon separation.[1] The Applicant submits an updated June 2021 psychiatric evaluation of the qualifying relative, which the same evaluator conducted. To support a finding of financial hardship, the Applicant provides the couple's 2019 and 2020 tax documents and a sampling of bills, including those for utilities, real estate tax, and two credit cards, among others. Further, the Applicant's U.S. citizen children, born in 1995 and 1998, also provide statements attesting to the positive impact the Applicant has had in their lives and their ongoing need for his fatherly support.

Regarding medical hardship, the Applicant's wife indicates in her statement that she has asthma, worries for the Applicant and his immigration status, has trouble sleeping, cries every day because she is sad, has lost weight, and relies on the Applicant to care for her. She explained that the Applicant cares for her when she has an asthma attack, makes sure she takes her medication, and ensures that she receives the treatment a psychologist advised. As explained, the record includes a February 2021 psychiatric evaluation of the Applicant's wife and an updated evaluation from the same psychiatrist, dated June 2021. The updated evaluation discusses the qualifying relative's symptoms and reiterates that she suffers from MDD compounded by anxiety. Aside from noting that the qualifying relative received follow-up treatment at the June 2021 appointment and that she takes a specific medication for her depression, the evaluation does not contain a treatment plan. In addition, the record contains no explanation of whether the qualifying relative has pursued any other treatment for her anxiety and depression and if so, the outcome of any such treatment.

Although the psychiatrist lists the medications the qualifying relative takes for her various ailments and discusses her asthma and severe gastrointestinal (GI) distress, the record lacks independent and objective evidence that these medications were actually prescribed and that they are for a particular condition. Moreover, the record lacks information concerning the psychiatrist's qualifications to diagnose and treat GI distress and asthma, such that he could credibly opine on either condition's severe or chronic nature. Although the evaluator concluded that the presence and availability of the Applicant is a critical and positive factor for helping the qualifying relative with her chronic depression, GI distress, and asthma, the record does not contain medical documentation from a treating physician describing the GI and asthma conditions, her prognoses, any prescribed treatments, or the qualifying relative's need for any assistance in caring for herself.

Similarly, the evaluation does not contain a treatment plan for the qualifying relative's depression and anxiety such that it can be understood how the Applicant's presence and availability is a critical factor

[1] Notably, the Petitioner did not provide a personal statement with the initial filing of his Form I-601, with his motion to the Director to reopen his adjustment of status application, or with the appeal of his Form I-601 denial.

in her recovery. For instance, the evaluation does not explain whether other family members, friends, or relatives could offer similar support to the qualifying relative or whether the Applicant could still adequately provide emotional support even if separated from his wife. Although we acknowledge the statements of the Applicant's wife regarding the emotional strain separation may cause, the record does not contain sufficient detail about the impact of the emotional hardship she may experience in her daily life. Although the evaluator stated that, in is his professional opinion, the qualifying relative wife's mental state and medical conditions qualify as extreme hardship, the evaluation does not contain sufficient information or analysis to support a such a finding.

We conclude that whether the Applicant demonstrated that his exclusion would cause extreme hardship to a qualifying relative is a legal determination that only USCIS may make. See Matter of *Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (explaining that the immigration service "is responsible for making the final determination regarding . . . eligibility for the benefit sought"). USCIS need not defer to a psychiatrist's findings if they conflict with other evidence of record or are "in any way questionable." See id. Here, the evaluation is not accompanied by sufficient evidence or analysis to support the evaluator's conclusions. Therefore, it is of little probative value in this matter.

Regarding financial hardship, the qualifying relative states that she can perform limited work only and relies on the Applicant for financial support. She also explains that she does not have medical benefits in China and is afraid that her family cannot afford her medical expenses. However, the record does not contain sufficient information to support a finding that the qualifying relative is unable to support herself without the Applicant. As previously explained, it is not apparent that the qualifying relative needs any assistance to care for herself and therefore, it cannot be concluded that either her physical or mental conditions limit her ability to work. The record contains evidence that the qualifying relative has worked in the past and that the couple was able to send both of their children to college. Additionally, the record does not contain evidence of a need for medical treatments, let alone the expense of such treatments either in the United States or in China. Further, the tax documents and bills the Applicant provides on appeal support a finding of financial solvency. When we extrapolate the monthly bills to arrive at a years' worth of overall expenditures and compare this figure to the income figures provided in the tax documents, the comparison suggests that the qualifying relative has sufficient income to cover the family's financial obligations.[2] It also appears possible that the family could make reasonable adjustments to their lifestyle to reduce their expenses. Accordingly, we conclude that the record does not support a finding of financial hardship.

After our de novo review of the evidence submitted with the waiver application as well as the evidence the Applicant submits on appeal, we will affirm the Director's the decision. Although we recognize that the Applicant's wife may face some hardships upon separation, based on the record, we cannot conclude that when considered individually or in the aggregate, the hardship would go beyond the common results of separation from a loved one and rise to the level of extreme hardship.

As explained, demonstrating extreme hardship under both scenarios is not required if an applicant establishes that one of these scenarios would result from the denial of the waiver. In this case, the evidence does not establish which scenario would result. Therefore, the Applicant must establish that

[2] We multiplied monthly bill totals by 12 and added them together, along with the annual real estate tax due and compared the figure with the figures on the qualifying relative's 2020 W2 statements.

denial of the waiver application would result in extreme hardship to his qualifying relative both upon separation and relocation. As the Applicant has not established extreme hardship to his qualifying relative in the event of separation, we cannot conclude he has met this requirement. Accordingly, we need not discuss the claimed hardship to his qualifying relative in the event of relocation.

Furthermore, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion. The Applicant has the burden of establishing that he is eligible for a waiver of inadmissibility. Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met this burden. The Director's decision will be affirmed.

ORDER: The appeal is dismissed.