U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22147202

Date: OCT. 12, 2022

Appeal of Providence, Rhode Island Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Liberia, 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 Providence, Rhode Island Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant did not establish extreme hardship to his U.S. citizen spouse, his only qualifying relative. On appeal, the Applicant asserts that he has established extreme hardship to his spouse and a favorable exercise of discretion is warranted. 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). 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 discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. 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). In these proceedings, it is the Applicant's burden to establish

eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe,* 25 I&N Dec. 369, 375 (AAO 2010).[1]

II. ANALYSIS

On July 5, 2016, the Applicant's spouse filed a Form I-130, Petition for Alien Relative on his behalf. The Form I-130 was subsequently denied on March 29, 2018, because USCIS determined that the marriage was entered into solely for the purpose of obtaining an immigration benefit. This decision was never appealed. On March 17, 2020, the Applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status based on the Liberian Refugee Fairness provision of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, 133 Stat. 2309 (2019). On July 7, 2020, USCIS issued a request for evidence (RFE) requesting proof of Liberian nationality, proof all arrivals and departures from the United States, and evidence showing continuous physical presence since November 20, 2014. On August 5, 2020, USCIS received the Applicant's response which included copies of his birth certificate, passport, I-94 card, and Form W-2s, among other items. The Applicant was interviewed at the Providence, Rhode Island Field Office on January 14, 2021. On April 8, 2021, USCIS issued another RFE and instructed the Applicant to file a waiver application. The Director found the Applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act because he previously sought adjustment of status based on a sham marriage. On July 6, 2021, the Applicant submitted his response to the RFE which included a waiver application, the Applicant's inadmissibility statement, a hardship statement signed by the Applicant and his spouse, a copy of a quit-claim deed, a tax statement from the Town of [redacted], an auto insurance policy, and a sewer bill. On October 8, 2021, he submitted a psychological evaluation for his spouse. The Director denied the waiver application and Form I-485 on January 18, 2022, finding that he did not meet his burden of establishing extreme hardship to his spouse.

On appeal, the Applicant does not contest that he is inadmissible, a determination that is supported by the record. The issue on appeal is whether the Applicant demonstrated his spouse would suffer extreme hardship upon denial of the waiver. The Applicant contends that the Director did not properly consider the evidence in the record.

The Applicant must demonstrate that denial of the waiver application would result in extreme hardship to a qualifying relative or relatives, in this case his 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. 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. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (discussing, as guidance, establishing hardship upon separation or relocation).

[1] Although the Director determined that the claim of extreme hardship on behalf of the Applicant's spouse did not exist because the marriage was not *bona fide*, the Director did not consider whether section 204(c) of the Act applied to the Applicant's current application for immigration benefits.

In the present case, the record does not contain a statement from the Applicant's spouse indicating whether she intends to remain in the United States or relocate to Liberia if the Applicant's waiver application is denied. The Applicant instead submitted a joint statement signed by him and his spouse in which he theorizes that it would be extremely difficult for her to leave her children and move to Liberia when she has only ever lived in her native Haiti and the United States. The Applicant must therefore establish that if he is denied admission, his qualifying relative would experience extreme hardship both upon separation and relocation.

The Applicant submitted with his waiver application various documents, including a psychological report conducted on the Applicant's spouse detailing the hardship she would endure if the Applicant's waiver were not approved. The Director briefly referenced the receipt of this report and noted only that the report provides that the spouse resides with her three adult children and that their ages range from 20 years old to 27 years old, thus contradicting the Applicant's statement that his spouse lives with seven children. However, the record does not reflect that the Director otherwise considered the contents of the psychological report, which may be relevant to the determination of extreme hardship. Because the Director's decision does not reflect consideration of all evidence pertaining to extreme hardship, we will withdraw the decision and remand the matter for consideration of all relevant evidence.[2] Upon remand, the Director may request additional evidence considered pertinent to the new determination and any other issue to determine if the Applicant has established extreme hardship to his 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.

[2] On June 27, 2022, while the Applicant's appeal was pending, President Joseph R. Biden issued a Memorandum on Extending and Expanding Eligibility for Deferred Enforced Departure for Liberians to the Secretaries of State and Homeland Security. https://www.uscis.gov/humanitarian/deferred-enforced-departure/ded-covered-country-liberia. Consequently, the removal of any Liberian national, or person without nationality who last habitually resided in Liberia, who is present in the United States and who was covered under Deferred Enforced Departure (DED) as of June 30, 2022, was deferred though June 30, 2024. It also defers the removal of any Liberian national, or person without nationality who last habitually resided in Liberia, who has been continuously physically present in the United States since May 20, 2017. We note that the Applicant was previously granted Temporary Protected Status. Considering the renewed designation of Liberia for DED, country conditions may now be relevant in considering whether the Applicant can establish extreme hardship to his spouse, and ultimately whether discretion is warranted.