U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22727109

Date: OCT. 14, 2022

Appeal of Atlanta Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant 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 misrepresentation of a material fact. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative. The Atlanta Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility. The Director concluded the Applicant did not establish extreme hardship to their U.S. citizen spouse, her only qualifying relative.

On appeal, the Applicant submits a brief and additional evidence, asserting their eligibility. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review 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 dismiss the appeal.

I. LAW

A foreign national 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 ground if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the foreign national. Section 212(i) of the Act. If the foreign national demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

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).

Once the foreign national demonstrates the requisite extreme hardship, they must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N 296, 299 (BIA 1996).

II. ANALYSIS

A. Immigration History

In 2002, an employer filed a Form I-140, Immigrant Petition for Alien Worker, on the Applicant's behalf and USCIS initially approved that petition in 2002. The Applicant then attended an adjustment of status interview in 2006 where she presented a job offer letter dated in March 2006 from the employer who filed the Form I-140. This job offer letter reflected the Applicant was currently working for that employer at the time of her adjustment interview.

However, during her interview, the Applicant admitted to the USCIS officer that the employer who filed the Form I-140 fired her in 2004. She stated another individual who was not associated with the employer provided her with the paperwork. When the Applicant presented the employment letter offering her a position and claiming that she was currently working for the employer on the Form I-140, this constituted a misrepresentation of a material fact. USCIS subsequently revoked the Form I-140's approval. The Applicant married a U.S. citizen in 2019 who filed a marital petition on her behalf, and USCIS approved this family-based petition in 2021. The Applicant also filed a waiver application and the Director denied that filing together with the Form I-485. The waiver application is now before us on appeal.

B. Extreme Hardship

Before the Director, the Applicant claimed her spouse would experience extreme hardship because he has a history of depression that would be aggravated if she were denied admission to the United States. She supported that position with a medical report confirming her spouse's major depressive disorder. She further claimed he would be subject to extreme hardship for financial reasons as he would not be able to meet their current monthly expenses without her, and his standard of living would suffer.

The Director concluded the Applicant did not establish extreme hardship to her spouse. Regarding his depression, the Director acknowledge his condition but determined she did not demonstrate that it renders him unable to function in his daily life, his condition can be mitigated through treatment, he has significant familial ties in the United States, and he could receive support and assistance from those relatives. Similarly, the Director found the Applicant's financial hardship claims to be insufficient. The Director reasoned he could receive assistance from close family, and not being able

to maintain a standard of living or to afford current financial obligations does not amount to an extreme hardship.

On appeal the Applicant disagrees with the Director's determination and claims that she demonstrated her spouse would experience extreme hardship, but she does not explain how the Director erred in their analysis. Simply disagreeing with the Director's decision and presenting similar arguments is generally not a sufficient basis upon which to file an appeal. Instead, the Applicant should explain and demonstrate how the Director came to the wrong conclusion and describe why the adverse decision was incorrect. It is insufficient to merely assert that the Director made an improper determination. Within an appeal, it should be clear whether the alleged impropriety in the decision lies with the interpretation of the facts or the application of legal standards. Where a question of law is presented, supporting authority should be included, and where the dispute is on the facts, there should be a discussion of the particular details contested. *Matter of Valencia*, 19 I&N Dec. 354, 355 (BIA 1986); *see also Matter of Keyte*, 20 I&N Dec. 158, 159 (BIA 1990). While the Applicant does not note that the Director's decision only evaluated her hardship claims individually instead of in the aggregate, we observe that shortcoming in the Director's analysis. Therefore, we will briefly discuss the Applicant's claims, then perform that aggregating analysis.

Although the Applicant provides materials relating to mental health in South Korea (in the event her spouse relocated with her to her home country), and how mental health issues carry a stigma in that country, the mental health assessment from a licensed marriage and family therapist in the record does not address what the effect would be on his mental health were he to relocate to South Korea. The mental health assessment only reflects that the presence of five listed symptoms indicates her spouse has a history of major depressive disorder, and the therapist states he is "concerned that the patient will experience considerable mental hardship if his wife does not receive her green card and is deported to Korea. In order to alleviate [her spouse's] symptoms of major clinical depression, I recommend that he seek treatment of psychotherapy on a regular basis and increase his level of social support to not be isolated in his depression." The assessment does not offer sufficient analysis to support the clinician's concerns. Further, the Applicant's spouse was exhibiting the five symptoms at the time of the assessment and it is unclear whether her spouse subsequently sought the type of treatment and social support that the clinician recommended.

We acknowledge that the appeal brief and the waiver application cover letter submitted before the Director—both documents originating from the Applicant's counsel—asserts that her spouse would go into a depressive state if he were to either relocate with her or if he were to remain in the United States upon her removal from the country. But without documentary evidence to support the claims, counsel's assertions in a brief do not constitute evidence nor will they satisfy the Petitioner's burden of proof. *Matter of Arambula-Bravo*, 28 I&N Dec. 388, 396 (BIA 2021); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Ultimately, the record lacks probative evidence to establish the effect on her spouse's mental state if she were refused admission as an LPR.

As it relates to her spouse's family and societal ties in the United States, the Applicant notes he has established his life in this country after residing here for more than 30 years and uprooting him from everything he has come to know would be an extreme hardship. Finally, the Applicant claims her spouse would endure financial hardships whether he remained in the United States or relocated with

her. She declares that he would be unable to maintain his current lifestyle, he could not meet his financial obligations, nor could he afford regular flights to see her in South Korea. She also claims that he could not "take off the necessary time to see her as often as he would want,"

We agree with the Director that no individual form of hardship measures up to the required standard if her waiver application is denied and she is refused LPR status. Again, 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 Pilch*, 21 I&N Dec. at 630–31. Considering her spouse's mental health history—only that he has a history of major depressive disorder; not the extent to which his mental health would be affected as the record lacks such evidence—the community and family ties he might have to sever, and the financial difficulties he would encounter, the Applicant has not demonstrated the hardships he would undergo exceed the common results of removal and rise to the level of extreme hardship.

Accordingly, the record as a whole does not sufficiently establish the Applicant's U.S. citizen spouse would suffer extreme hardship upon separation from her or relocation with her in the event she is refused admission. This is what is required to establish eligibility for a section 212(i) waiver. As the Applicant has not demonstrated the requisite extreme hardship, no purpose would be served in determining whether she merits the waiver as a matter of discretion. Based on our determinations above, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and she has not demonstrated she warrants a waiver of that inadmissibility ground. As a result, the waiver application remains denied.

ORDER: The appeal is dismissed.