U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21369155

Date: OCT. 27, 2022

Appeal of Oakland Park 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 fraud or 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 or qualifying relatives. The Oakland Park Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility. The Director concluded the Applicant established extreme hardship to her U.S. Citizen spouse upon her separation, but they determined the record contained insufficient evidence of that same level of hardship if he were to relocate with her to Italy. The Director further decided the record was inadequate to show discretion should be exercised in the Applicant's favor.

The matter is now before us on appeal. 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). We must balance the adverse factors evidencing an applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country while in compliance with our immigration laws (particularly where residency began at a young age), evidence of hardship to the foreign national and their family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

II. ANALYSIS

After reviewing the entire record, for the reasons set out below, we have determined that the Applicant has not demonstrated this waiver application should be approved. The Director concluded that although the Applicant established extreme hardship to her qualifying relative if they were separated, she did not make the same showing if her spouse were to relocate with her to another country. Additionally, the Director made a discretionary determination weighing the positive and negative factors in the Applicant's case and decided that her numerous actions of obtaining immigration benefits for herself and her family based on fraud simply outweighed the positive aspects of her case. Upon consideration of the entire record, including the evidence submitted and arguments made on appeal, we adopt and affirm the Director's ultimate determination with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623, 624 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994)); *see also Chen v. INS*, 87 F.3d 5, 7–8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

We begin by acknowledging an issue raised in the appeal brief: that the Applicant was not required to demonstrate extreme hardship to her qualifying relative in both scenarios: (1) upon their separation if she were removed from the United States; and (2) upon her qualifying relative's relocation with her to another country. Within the waiver application filing, the vast majority of the content pointed to

the couple's separation and the cover letter noted that her spouse would not be able to join her or depart the United States. The Applicant's and her spouse's statements also only discusses separation from one another. As a result, we agree that the Applicant was only required to demonstrate extreme hardship upon her separation from her spouse, which the Director determined that she achieved.

However, that does not alter this case's outcome because the Director then performed a discretionary analysis. In that examination, the Director considered the positive factors the Applicant identified and concluded her long history of obtaining immigration and other benefits via the fraud was too significant and simply weighed too heavily against her for them to find in her favor.

The positive factors the Applicant identifies on appeal include her marriage to a U.S. citizen, the extreme hardship he would face if she were denied admission, they have resided in the United States for more than 13 years, she has no prior immigration violations or criminal record, she has worked in the country and paid her taxes, and her close family resides in this country. We also note that on appeal, the only adverse factor the Applicant included in a chart of negative and positive factors was her submission of a form intended to replace a "green card" knowing she had long ago relinquished her LPR status and was no longer entitled to use or rely on the status that a "green card" represents. But that was not the full extent of her misuse of the LPR status that she was not entitled to. First, she filed for a replacement green card knowing she was not entitled to the status it represented on at least two occasions, and not just one time. She also filed a relative petition on her daughter's behalf that was approved, and in multiple instances she entered the United States utilizing the LPR status to which she was not entitled.

Because of the unusual circumstance of the Applicant's lengthy residence in the United States, we should address it here. We acknowledge the Applicant's time in a lawful LPR status in the United States before 1986 is a positive factor. But all of her time in the country after she relinquished her LPR status in 1986 was not time spent in a lawful status. Her lengthier period in an unlawful status contravenes and surpasses any favorable weight of her lawful LPR status from more than three decades ago. Any residence in the United States must be in a lawful status to be considered a positive factor. Although the Commissioner in *Matter of Lee*, 17 I&N Dec. 275, 278 (Comm'r 1978) reversed a decision that an applicant lacked good moral character, when addressing the discretionary factors and the applicant's length of time in the United States, they notably stated that:

> [We] can only relate a positive factor of residence in the United States where that residence is pursuant to a legal admission or adjustment of status as a permanent resident.
>
> If we were to reward a person for remaining in the United States in violation of law, the structure of all laws pertaining to immigration would be seriously threatened. Therefore, I will dismiss counsel's contention that this should be considered a favorable factor.

Id. When considering the length of a foreign national's presence in the United States, the nature of that presence during this period must be evaluated. *Matter of Mendez*, 21 I&N Dec. 296, 302 (BIA 1996); *see also Dragon v. INS*, 748 F.2d 1304, 1307 (9th Cir. 1984); 1 *USCIS Policy Manual* E.8(C)(2), and 7 *USCIS Policy Manual* A.10(B)(2), https://www.uscis.gov/policymanual (requiring

that a foreign national's residence in the United States be in a *lawful* status to qualify as a positive factor).

And even though the Applicant presents a sympathetic case, we agree with the Director that she has not shown that the positive factors in her case have overcome the adverse elements that are also present. Considering the record in its totality, the Applicant has not established that a favorable exercise of discretion is warranted, and the waiver application should therefore remain denied.

ORDER: The appeal is dismissed.