U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23117378

Date: OCT. 31, 2022

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico, 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 and under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), for unlawful presence.

The Director of the Los Angeles, California Field Office denied the waiver application, concluding that the Applicant did not establish that her qualifying relative would suffer extreme hardship if her waiver was not granted.

On appeal, the Applicant submits a brief and evidence and contends that her qualifying relative would suffer extreme hardship if she could not remain in the United States as she is the primary caretaker of her qualifying relative. 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. 369, 375 (AAO 2010). 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 of admission would result in extreme hardship to the U.S. citizen or LPR spouse or parent of the noncitizen.

Section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), renders inadmissible any noncitizen who has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States. Section 212(a)(9)(B)(v) of the Act provides for a waiver of this inadmissibility if refusal 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 Director found that the Applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act because she had previously resided unlawfully in the United States for one year or more and then voluntarily departed the United States. The Director noted that the Applicant accrued more than one year of unlawful presence in the United States between April 1997 and December 1999, then left the United States, and subsequently reentered the United States within 10 years of her departure.

The Director also found that the Applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact. The Director noted that the Applicant made willful misrepresentations during her application process for a U.S. nonimmigrant visitor visa in 2000 regarding her previous unlawful entries into the United States; unlawful periods of stay in the United States; marital status and family residing in the United States; and arrest in the United States.

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 her LPR spouse will suffer extreme hardship if the inadmissibility is not waived, and if so, whether she 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 Director noted that the Applicant stated that her spouse would not be willing to relocate to Mexico because of the lack of financial support, medical services, and overall security in Mexico. The Applicant must, therefore,

establish that if she is denied admission, her qualifying relative would experience extreme hardship upon separation.

Regarding medical hardship, the Applicant, a 52-year-old female, asserted that her spouse, a 67-year-old male, would suffer extreme hardship if she could not remain in the United States because she is the primary caretaker of her spouse. The Applicant stated that her spouse has suffered from depression, diabetes, high blood pressure, chronic low back pain, chronic kidney disease, and carpal tunnel syndrome and that her spouse relies on the Applicant to go about his daily activities and to maintain his physical and mental well-being. The Applicant's spouse stated that there were times that his spinal pain was so severe that he could not rise from his bed on his own and that he would call out to the Applicant to help him stand up, go to the bathroom, shower, or change. The Applicant's spouse also stated that the Applicant drove him to the hospital when the pain was too unbearable. The Applicant's spouse stated that the Applicant made sure that he did not experience much medical hardship or physical pain by ensuring that he ate healthy and took his medications. The Applicant's spouse stated that he does not have any relatives who live near his home to help him. The Applicant's spouse also stated that if they were forced to hire a caregiver or a housekeeper, he would not feel comfortable relying on a stranger to help him change or shower, and they would not feel comfortable with a stranger inhabiting in their home. The Director found that the Applicant submitted her spouse's medical cards but did not provide evidence of her spouse's medications, treatments, doctor visits, or costs of medical care and determined that little wight could be accorded to her spouse's statements in the absence of supporting evidence.

On appeal, the Applicant submits medical records for her spouse. The medical records indicate that the Applicant's spouse has chronic low back pain, chronic kidney disease, diabetes, hand weakness, hypertension, hypocalcemia, onychomycosis, tinea corporis, and tinea pedis. However, the medical records do not establish his need for assistance in daily activities. The record fails to reflect that due to his medical conditions, the Applicant's spouse is unable to rise from his bed on his own, stand up, go to the bathroom, shower, or change and relies on the Applicant for his daily activities. Further, the documents provided do not indicate the Applicant's financial obligation to his spouse's medical bills or what role she plays in his treatments. While it appears that the Applicant's spouse receives medical treatments and appropriate monitoring by medical personnel, the documents do not indicate that the Applicant's spouse would experience extreme medical hardship if the Applicant's spouse lived in the United States without the Applicant, particularly when the Applicant's spouse resides with his two adult sons.

Regarding emotional hardship, the Applicant previously submitted a clinical evaluation of her spouse from a psychotherapist and clinical social worker. The evaluation stated that the Applicant's spouse was diagnosed with severe major depressive disorder and generalized anxiety disorder. The evaluation further stated that if the Applicant's spouse is separated from the Applicant, his depression and anxiety would get worse and could become debilitating, preventing him from adequately functioning day-to-day. However, the Director noted that the Applicant's spouse's travel history reported several trips abroad over the past years to Mexico without the Applicant and that the Applicant and her spouse have dealt with separation before. The Director determined that as such, the record did not demonstrate an extreme hardship if the Applicant's spouse resided in the United States while the Applicant resided abroad.

The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, 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 his 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.

Regarding financial hardship, the Applicant's spouse stated that the Applicant handles all domestic chores for their household and administers their household finances. The Applicant's spouse also stated that his Social Security income in the amount of $1,200 a month is the single source of income for him and the Applicant, that he pays for their monthly rent and groceries, and that their sons pay for the cable, a small portion of their monthly rent, and some of the groceries. The Applicant's spouse further stated that if the Applicant is removed from the United States, they would be forced to maintain two households and his income alone would not be sufficient to support the Applicant while she resides in Mexico. The Director noted that the Applicant did not submit any evidence of actual housing costs in Mexico. The Director also found that the Applicant's two adult sons who work full-time contribute to the household expenses and determined that the Applicant's spouse would not experience extreme financial hardship should the Applicant be required to return to Mexico for a period of time.

On appeal, the Applicant's spouse asserts that he would not feel comfortable asking for his sons' assistance in providing financial support for the Applicant and submits his bank statements, which show deposits of his monthly Social Security income and withdrawals for partial monthly rent payment. The Applicant also submits letters from her sons, which state that her elder son works for a manufacturing plant and that her younger son works as a machinist for an auto parts manufacturer. The Applicant's younger son states that they are her only source of income. The record does not show that the Applicant's spouse is the sole source of assistance available to the Applicant, particularly in view of her close relationships with her two adult sons who reside with the Applicant and her spouse. It has not been established that the Applicant's two sons would not be able to contribute to the family's income to support the Applicant or that the Applicant's spouse would not be able to make adjustments as necessary due to new circumstances.

As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to her 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, emotional, and other personal hardships of separation would be unusual or atypical to the extent that they rise to the level of extreme hardship.

As the Applicant has not established extreme hardship to her spouse in the event of separation, we cannot conclude that she has met this requirement. The Applicant asserts that her waiver should be granted in the exercise of discretion because of positive factors. We acknowledge that the Applicant has many positive factors, including her close families ties in the United States, her support for her family as a loving, kind, and devoted mother and spouse, and her lack of criminal records. However, because the Applicant has not demonstrated extreme hardship to her qualifying relative if she is denied admission to the United States, we need not consider whether she merits a waiver in the exercise of discretion. Therefore, the waiver application will remain denied.

III. CONCLUSION

The Applicant has not established her statutory eligibility for the requested waiver under section 212(i) and section 212(a)(9)(B)(v) of the Act. Accordingly, the waiver application will remain denied.

ORDER: The appeal is dismissed.