U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22247261

Date: SEPT. 14, 2022

Appeal of Philadelphia, Pennsylvania Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, who has requested to adjust his status in the United States to that of a lawful permanent resident, seeks a waiver of inadmissibility for fraud or misrepresentation under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this waiver as a matter of discretion if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Philadelphia, Pennsylvania Field Office denied the application, concluding that the Applicant did not establish extreme hardship to his qualifying relative and a waiver was not otherwise warranted as a matter of discretion.

In these proceedings the Applicant has the 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

Section 212(a)(6)(C)(i) of the Act 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. As stated, this inadmissibility may be waived 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). While some degree of hardship to qualifying relatives is present in most cases, 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 requisite extreme hardship is established, the noncitizen must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

II. ANALYSIS

The Director determined that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act because he previously sought admission to the United States with a fraudulently obtained passport and U.S. nonimmigrant visa. The Applicant does not contest this determination, and it is supported by the record.[1] The issue on appeal is whether the Applicant has established that his spouse, the only qualifying relative[2] will experience extreme hardship if the inadmissibility is not waived, and if so, whether a waiver is warranted in the exercise of discretion.

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. Establishing 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. 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/policy-manual. In this case, the record does not contain a clear statement from the Applicant's spouse indicating whether she intends to remain in the United States or relocate to Ecuador (the Applicant's native country) if the waiver application is not granted. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

The Applicant and his spouse have been married since 2013. They have a 17-year old daughter together, and the Applicant's spouse has a 26-year-old son from a previous relationship. The Applicant indicated on the instant Form I-601 that his spouse would suffer extreme financial and mental hardship if he were to be removed from the United States.

The Applicant's spouse states that she currently has three different jobs and works about 80 hours per week, while the Applicant has a steady job earning $19 per hour cleaning offices. The spouse further states that the Applicant's job provides them both with health insurance, and that she could not survive without his income. She explains that their monthly expenses include a total of $1000 in mortgage payments on two houses—one that they bought together in 2017, and one she purchased in Puerto Rico on her own over 20 years ago. She states that she owes a total of $50,000 in credit card and personal loan debts. The spouse explains that although she did not qualify for another loan and had to purchase a car through the Applicant's mother, she and the Applicant are responsible for making the loan and car insurance payments under the mother's name. The spouse further states that she and the Applicant have other bills to pay, including internet, cable, cell phone, utilities, and general expenses,

[1] The record reflects that in 1998 the Applicant attempted to enter the United States by presenting a photo-substituted Ecuadorian passport with a U.S. visa issued to someone else. He testified that his parents purchased the passport for him so he could travel to the United States. The Applicant was allowed to withdraw his application for admission and return to Ecuador. He testified that he returned to the United States in 2000 without inspection and admission or parole.

[2] The Applicant does not claim hardship to his lawful permanent resident mother who is residing in the United States.

as well as the Applicant's immigration-related fees. She explains that she and the Applicant currently earn about $1000 weekly and are able to afford those expenses, but she does not know what she would do without the Applicant's income.

The spouse also claims that it would be very difficult for her to survive psychologically and emotionally if the Applicant were not in the United States. She states that she has a lot of things on her mind and feels drained. She explains that she sometimes cries because she worries about not being able to afford to send her daughter to college, and about her elderly parents who live in Puerto Rico and are struggling financially in the aftermath of Hurricane Maria and the COVID-19 pandemic. The spouse further states that she went through a period of depression many years ago and that she recently met with a counselor who suggested weekly counseling sessions, but that she feels so overwhelmed by her work and other responsibilities that she doesn't know if she can fit one more thing into her schedule. The spouse also claims that she could not relocate to Ecuador because her children's lives and futures are in the United States, and she has no family in Ecuador, which is a poor country; although the Applicant's father and grandfather live there and have a large house, there is no running water, the electricity is often turned off, and jobs are scarce.

In support of those statements, the Applicant submits his and his spouse's weekly earnings statements for the first quarter of 2022; copies of the joint 2019-2020 federal tax returns along with his spouse's 2019-2020 Forms W-2 Wage and Tax Statement; letters from his mother, his pastor, and his children; car loan and insurance documents, utility bills, credit card and mortgage statements; proof of medical insurance; a handwritten ledger of bills paid in 2021; and the spouse's bio-psychological evaluation.

We recognize that the spouse may experience some financial and emotional difficulties if she remains in the United States without the Applicant. However, the evidence considered in the aggregate is still insufficient to show that her individual and cumulative hardships in the event of separation would go beyond the common results of removal or inadmissibility and rise to the level of extreme.

As an initial matter, the evidence does not provide a clear picture of the family's economic situation. Although the spouse indicates that she does not know if she would be able to pay the bills and afford to send their daughter to college without the Applicant's income, the record indicates that the Applicant started working only recently. Specifically, the Applicant represented on the previously submitted Form I-864A, Contract Between Sponsor and Household Member, that he had no income from 2017 through 2020, and the 2019-2020 federal tax returns and W-2 Forms reflect only his spouse's earnings for those years. This indicates that the spouse was the sole bread winner during this period, and that she was responsible for paying the bills and supporting the family without the Applicant's financial contributions. The Applicant does not explain if his spouse received financial support from other family members when he was not working, or whether his adult stepson or his mother, who appears to be living in the same town would be able to assist his spouse with the household expenses in his absence. In addition, while the spouse indicates that she relies on the Applicant's medical insurance, the January 2022 insurance invoice in the record indicates that the insurance policy is in her name. Moreover, although the ledger of bills paid provides some insight into the regular household expenses, the entries therein do not indicate that the Applicant was responsible for or provided financial means for paying the bills. Thus, while we acknowledge that the evidence reflects the Applicant has been employed since early 2022 and helps his spouse pay the bills,

this is not sufficient to show if and to what extent his departure from the United States will impact the spouse's ability to meet her financial obligations.

Furthermore, the spouse's statements and her bio-psychological evaluation do not support a conclusion that she would experience psychological and emotional hardship which exceeds that usually expected upon separation. The evaluation indicates that the spouse reported feeling severe sadness, fear, and anxiety as a result and emotional response to possibility of separation from the Applicant, as well as reexperiencing and remembering trauma and stressful events that occurred earlier in her life. The mental health professional concluded that the spouse is suffering from post-traumatic stress disorder (PTSD), and may continue experiencing moderate depression and anxiety which could require pharmacotherapy. The mental health professional recommended for the spouse to continue processing and further developing resiliency and, if possible attending therapeutic sessions to resolve and integrate thoughts, sentiments, and beliefs while adjusting to daily life.

We acknowledge the spouse's diagnosis, and her past traumatic experiences, and do not dispute that she may experience some emotional and financial difficulties if the Applicant is refused admission to the United States. However, the evidence considered in the aggregate is insufficient to show that the spouse's hardship would exceed that which is usual or expected upon family separation.[3]

As stated, the Applicant must establish that denial of the waiver application would result in extreme hardship to his qualifying relative upon both separation and relocation. Because the Applicant has not demonstrated that his spouse would experience extreme hardship in the event of separation, we cannot conclude that he has met this requirement. Consequently, we need not consider at this time whether the Applicant merits a waiver in the exercise of discretion. The waiver application will remain denied.

ORDER: The appeal is dismissed.

[3] We recognize the spouse's statements describing the Applicant as a hard worker and a supportive, reliable partner, as well as character reference letters from his children and his pastor. However, as they attest primarily to the Applicant's character, we cannot afford them significant weight in the extreme hardship analysis.