U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22726403

Date: SEP. 22, 2022

Appeal of New York, New York 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 and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The Director of the New York, New York Field Office denied the application, finding that the Applicant had not established that her lawful permanent resident (LPR) spouse, the only qualifying relative, would suffer extreme hardship upon his removal from the United States. On appeal, the Applicant contends she has established that her spouse will experience extreme hardship due to her inadmissibility and that she merits a favorable exercise of discretion.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This office reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, as explained below, we will remand the matter to the Director for the entry of a new decision.

I. LAW

Any 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. There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national. 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).

If the foreign national demonstrates the existence of the required hardship, then he or she must also 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 the 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 (particularly where residency began at a young age), evidence of hardship to the foreign national and his or her 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

The Applicant, a native and citizen of Guyana, was found inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation. Specifically, the record establishes that when the Applicant was 18 years old, she entered the United States using a fraudulent passport and visa documentation. On appeal, the Applicant contests her inadmissibility and argues that she was too young and naïve to understand what was happening, and that a family member procured the fraudulent entry documents for her to use. She states that she did not understand she had done anything wrong until her passport and visa were taken from her upon arrival to the United States.

To begin, there is no age exception to the section 212(a)(6)(C)(i) inadmissibility for misrepresentation. Furthermore, government records indicate that shortly before her entry, she applied for and was denied a tourist visa to enter the United States. In addition, her explanation does not provide key facts which could lead USCIS to absolve her of culpability for entering the United States with fraudulent documents. For instance, she does not provide any explanation for why shortly after the denial of her tourist visa by the U.S. consulate in Guyana, she reasonably believed her documentation was valid. She also leaves out key facts from her explanation, such as which family member(s) gave her the fraudulent passport with visa and took her documentation away upon entering the United States. As such, we find the Applicant's explanation insufficient to overcome the evidence of record and conclude that she is inadmissible under section 212(a)(6)(C)(i) of the Act. Thus, the Applicant must seek a waiver of this inadmissibility.

Therefore, the next issue on appeal is whether the Applicant has established extreme hardship to her qualifying relative spouse. We have considered all the evidence in the record and conclude that the

claimed hardships to the Applicant's spouse rise to the level of extreme hardship when considered cumulatively.

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 of these scenarios is not required if an applicant's evidence establishes that one of these scenarios would result from the denial of the waiver. An 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, https://www.uscis.gov/policymanual. In the present case, the Applicant's spouse indicates that he intends to remain in the United States if the waiver application is denied. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship upon separation. To show this, the record contains statements from the Applicant and her spouse, financial, education and employment documentation, medical and mental health records, biographic and civil documents, support letters attesting to the Applicant's character, photographs, and information about country conditions in Guyana.

The Applicant's spouse contends that he cannot read or write. He attributes his illiteracy to his lack of opportunity for schooling in Guyana. He immigrated to the United States through his mother, a U.S. citizen, who resides in New York with his sister-in-law. He contends that despite his lack of education, he has found a stable, union job that provides him and his family with health benefits and a livable wage. As the primary breadwinner for his family, which includes his wife and their three sons (currently aged 17, 13, and 5), he could not go to Guyana to live if his wife is removed there because he has no job prospects in that country. He would also lose his lawful permanent resident status and his house, and other assets he has worked hard to attain during the years he has worked in the United States. He contends he would experience extreme emotional, medical, and financial hardship if he to remain in the United States without the Applicant.

In support of the emotional and medical hardship referenced, the Applicant submits a statement from her spouse explaining that the Applicant is his primary support system. Because he cannot read, the Applicant makes sure he is taking the right medication and dosage for his ongoing back problem and depression. He explains that the Applicant handles all aspects of his family's life, and he describes how his oldest two sons are thriving in school, primarily due to the Applicant's involvement because she is a constant source of motivation and support for his three sons. If the Applicant were to return to Guyana, he could not manage his three sons' care and educational needs, while also maintaining his job, and his three sons would have to move to Guyana with their mother, which would mean that he would lose the emotional support of the Applicant, and also the close family connection and bond he has with his three sons. A February 2019 evaluation performed by a licensed psychologist on the Applicant's spouse and their three sons corroborated the family's closeness, structure, and the effects on the Applicant's spouse of the Applicant and their three sons' separation from him. Other evidence corroborating their claims of emotional and medical hardship to him includes letters from the Applicant's spouse's treating physicians, and his prescription records.

The Applicant's spouse also maintains that he will experience extreme financial hardship if the Applicant and their three children move to Guyana, because he will have to support them and maintain

two households. In 2021, the Applicant started working part-time as a security guard, and her income contributes to the family's overall ability to pay school and extracurricular fees for their sons, substantial credit card debt, their house's mortgage, car payments, and other incidentals related to their health care. If the Applicant moves to Guyana, the Applicant's spouse would be responsible for paying for private schooling, separate health insurance, and all other household expenses to help the Applicant and their children survive. The record also contains documentation of the Applicant's and his spouse's financial obligations, and current income to substantiate their claims.

The record contains documentation establishing the Applicant's spouse's mother's dependence on the Applicant and her spouse, and their medical conditions. The record also contains information about country conditions in Guyana, including evidence regarding high crime, poverty, the difficulty accessing adequate medical care, as well as systemic barriers to education.

We find that the new evidence submitted by the Applicant on appeal adequately addresses the insufficiencies identified by the Director to establish, when considered with other evidence of record, that the Applicant's spouse will experience extreme hardship if he separates from the Applicant. As such, the Applicant has established extreme hardship to a qualifying relative for the purpose of this section 212(i) waiver for fraud or willful misrepresentation.

The Director did not consider the issue of discretion. Therefore, we will remand the matter to the Director for a determination of whether the Applicant now merits a favorable exercise of discretion, taking into account the foregoing analysis showing that the Applicant has established extreme hardship to her qualifying relative spouse, which is an additional favorable factor to be considered.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.