U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20708707

Date: SEP. 28, 2022

Appeal of Denver, Colorado Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant is inadmissible to the United States and 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 Denver, Colorado Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's U.S. citizen spouse, the only qualifying relative, would experience extreme hardship if she were denied the waiver. On appeal, the Applicant submits a brief and new evidence, and asserts that the Director erred by failing to consider the cumulative effect of the different hardships her spouse would experience due to her inadmissibility.

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 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, 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 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 noncitizen. If the noncitizen demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. 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).

II. ANALYSIS

The Applicant does not contest the finding of inadmissibility, which is supported by the record. The issues on appeal therefore are whether the Applicant has established extreme hardship to a qualifying relative and, if so, whether she also merits a favorable exercise of discretion. We have considered all the evidence in the record, including the documentation submitted on appeal, and conclude that the claimed hardships to the Applicant's U.S. citizen spouse rise to the level of extreme hardship when considered both individually and cumulatively.[1]

As noted, the Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case her U.S. citizen 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 scenarios is not required if an applicant's evidence establishes 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.* The Applicant's spouse submitted a declaration and stated that if the Applicant returned to Mexico, he would "have to go with her" and does not see "any other way." The Applicant must therefore establish that if she is denied admission, her qualifying relative would experience extreme hardship upon relocation.

Documentation submitted with the waiver application includes but is not limited to a statement from the Applicant's U.S. citizen spouse, a psychological evaluation from a psychotherapist regarding her spouse's diagnosis, and letters of support. The Applicant explained that she has been married to her spouse for nearly 30 years and the couple has two U.S. citizen children that currently reside with them. She also stated that her spouse's extended family, including his brothers, live nearby, and they often get together for meals and family events. The declarations from the Applicant, her spouse, and her children all indicate that they are a very close family. The Applicant contends that her qualifying relative would experience extreme emotional hardship because of her continued inadmissibility.

The Applicant's spouse asserts that he will experience emotional, medical, and financial hardships were he to relocate to Mexico to reside with the Applicant. The Applicant's spouse explained that he

[1] While we may not discuss every document submitted, we have reviewed and considered each one.

moved to the United States in 1989 and has established a full life in Colorado with gainful employment, home ownership, and strong family ties including two U.S. citizen children that reside with him and siblings that live nearby. He contends that it would be very difficult to leave the well-established life he built in the United States after living here for decades and leave his children and brothers to start a new life in Mexico at his advanced age. He also stated that as a result of his spouse's immigration issues, his depression and anxiety have worsened, and he fears he would not be able to obtain effective and affordable treatment in Mexico. According to an evaluation from a psychotherapist, the Applicant's spouse was diagnosed with major depressive disorder with melancholic features and generalized anxiety disorder. He also points to country conditions in Mexico, including concerns over crime and the lack of sufficient mental healthcare, and claims he fears for his and the Applicant's safety and well-being.

The Applicant's spouse also stated that he would suffer financial hardship if he relocated to Mexico because he would face discrimination based on his older age and limited education. Further, he stated that his employer is not located in Mexico, and he could not work in the same field—the telecommunications industry—because the systems are different in Mexico and internet access is not readily available in his hometown. The Applicant's spouse also contends that he is gainfully employed as a cable technician earning $31 per hour plus overtime with health insurance, but were he to relocate abroad, he would suffer career and professional disruption and therefore economic decline. The Applicant's spouse also stated that he owns a home, and if he moved abroad, he would struggle to support two households and would risk losing his home. In support, the Applicant submitted documentation of her spouse's gainful employment in the United States, as well as evidence indicating he earns over $70,000 as a cable technician. In addition, she submitted documentation regarding problematic economic condition in Mexico, such as a very high unemployment rate.

We find that the new evidence submitted by the Applicant on appeal adequately addresses the insufficiencies identified by the Director and establishes, when considered alongside previously submitted evidence, that the Applicant's spouse would experience hardship upon relocation with the Applicant and, when considered in the aggregate, rises to the level of extreme.

The Applicant has established extreme hardship to a qualifying relative for purposes of a waiver for fraud or willful misrepresentation. As the Director did not previously consider whether the Applicant has established that she merits a favorable exercise of discretion, we find it appropriate to remand the record for the Director to determine in the first instance whether the Applicant merits a favorable exercise of discretion.

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