U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22699685

Date: SEP. 29, 2022

Appeal of Chicago, Illinois 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 the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). The Director of the Chicago, Illinois Field Office, denied the application, concluding that the Applicant did not establish extreme hardship to his qualifying relative, if the waiver is denied. On appeal, the Applicant asserts that the Director's decision was erroneous and that he has met his burden of demonstrating that his qualifying relative will suffer extreme hardship and that he merits a waiver as a matter 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). Upon our de novo review, we will remand the matter to the Director for further proceedings.

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 U.S. citizen or LPR spouse or parent of the noncitizen. If the noncitizen demonstrates the existence of the required hardship, then they must also show that U.S. Citizenship and Immigration Services 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 issue on appeal is whether the Applicant has demonstrated his LPR spouse, the only qualifying relative in this case, would experience extreme hardship upon denial of the waiver. The Director did not describe the Applicant's inadmissibility but stated that he is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for fraud and willful misrepresentation. We note, on the waiver application, the Applicant stated that he provided multiple false names to the immigration officials upon being detained after his unlawful entries. On appeal, the Applicant does not contest his inadmissibility. However, the Applicant contends that the Director failed to consider the hardship effects of his son's autism on his spouse and resubmits his son's individual education program (IEP). The Applicant reiterates the financial hardship his spouse would experience if he were deported. He also submits U.S. Department of State's travel advisory information for Mexico. The Applicant further contends that the Director did not explain whether the hardship factors were considered in the aggregate.

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 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/policymanual. In the present case, the record is unclear whether the Applicant's spouse would remain in the United States or relocate with the Applicant if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

Upon review, we conclude that the record does not establish that the Director properly considered all relevant evidence related to extreme hardship to the Applicant's spouse. As noted above, section 212(i) waiver requires a showing of extreme hardship to the U.S. citizen or LPR spouse or parent of the applicant. However, the Director should also consider hardship to the qualifying relative resulting from hardship to non-qualifying relatives, including their children. While the Director states that their "children are taken into account in the totality of the circumstances," the Director does not discuss the hardship factors resulting from their son's condition. For example, in her statement submitted in support of the Applicant's waiver application, the Applicant's spouse expresses her concerns about their son's autism and how the separation from his father or relocation to Mexico would affect their son. She explains the close relationship their son has with his father and how the Applicant attends their son's needs, including his special needs. She also expresses concerns that their son's educational needs would not be met in Mexico should they relocate with the Applicant. IEP states that the Applicant's son has a diagnosis of autism and has difficulty staying focused, converses with teachers and peers inappropriately, his academic needs significantly differ from that of his same aged peers, he requires a separate setting along with a modified curriculum, and that if there is a break in his routine, he may need extra reassurance. However, the Director's decision does not contain any analysis of the

hardship the Applicant's spouse would experience resulting from their son's condition and his special needs.

We also note that throughout the decision, the Director makes conclusory statements without sufficiently analyzing the hardship factors. For example, the record contains a breakdown of household expenses and income. While the Director acknowledges the Applicant's spouse's financial concerns, the Director does not explain why the deficit caused by the loss of the Applicant's income would not rise to a level of extreme hardship. The decision also does not discuss his spouse's concerns regarding working extra hours to compensate for their financial deficit which takes away time she needs to attend to their son's special needs.

Accordingly, we will withdraw the Director's decision and remand the matter to the Director to properly consider all relevant evidence including the evidence submitted on appeal. Upon remand, the Director may request any additional evidence considered pertinent to the new determination and any other issue to determine in the first instance if the Applicant has established extreme hardship to his spouse and 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.