U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25629845

Date: APR. 4, 2023

Appeal of Fort Myers, Florida 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), for fraud or willful misrepresentation.

The Director of the Fort Myers, Florida Field Office denied the application, concluding that the record did not establish that the Applicant's U.S. citizen spouse, her only qualifying relative, would experience extreme hardship if the waiver was not granted. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

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). A discretionary waiver of this ground of inadmissibility may be granted 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. If the noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

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).

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 Applicant does not contest that she is inadmissible for fraud or misrepresentation. She falsely stated she was married and employed with the Government of China in her 2015 nonimmigrant visa application and at her consular interview. She seeks a waiver of this ground of inadmissibility. On appeal, the Applicant submits a brief contending that she established eligibility for the waiver based on extreme hardship to her U.S. citizen spouse. She argues the Director erred when he failed to address the hardship upon relocation to China and only considered the hardship factors related to separation. The Applicant also disagrees with the Director's weighing of the hardship upon separation in the established record and argues that the Director failed to consider the Applicant's hardships in the aggregate.

On appeal, the Applicant submits a brief and new statement from her spouse. Documentation submitted with the waiver application includes but is not limited to statements from the Applicant, her spouse, her stepdaughter, her father-in-law and her sister-in-law; a copy of a mental health evaluation for the Applicant's spouse; copies of joint federal income tax returns for 2018 through 2021; copies of medical documentation for the Applicant's father-in-law; a printout from Anxiety and Depression Association of America (ADAA) discussing generalized anxiety disorder; and a copy of an article discussing the effects of air pollution on senior citizens.

A. Relocation or Separation

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. Section 212(a)(9)(B)(v) of the Act. 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 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. *See generally 9 USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual. In the present case, the record before the Director was unclear regarding whether the Applicant's spouse would remain in the United States or relocate to China if the Applicant's waiver application is denied. Therefore, the Director determined the Applicant must establish that if she is denied admission, her qualifying relative would experience extreme hardship both upon separation and relocation. The Director then found that the Applicant did not establish extreme hardship to her spouse in the event of separation, thus she did not meet the

requirement that denial of the waiver application would result in extreme hardship to her qualifying relative upon both separation and relocation.

On appeal, the Applicant argues, through counsel, that the Director erred when he failed to address the hardship to the Applicant's spouse upon relocation to China and only considered the hardship factors related to separation. The current record indicates that if the Applicant's waiver is denied, her spouse intends to remain in the United States. The Applicant submits a new statement from her spouse, in which he states that he "could not and would not ever live in a [c]ommunist [c]ountry" and "[l]eaving this [c]ountry is just not an option for any of us and will never be..." Therefore, the Applicant must establish that if she must depart the United States, her spouse would experience extreme hardship upon separation. We acknowledge that the Applicant claims her spouse would experience extreme hardship upon his relocation to China. However, the hardship factors related to relocation are not relevant to the current analysis based on the Applicant's spouse's intent to remain in the United States.

B. Extreme Hardship

The Director denied the Applicant's waiver application, concluding that the Applicant had not established extreme hardship to her U.S. citizen spouse. The Applicant disagrees with the Director's weighing of the hardship in the established record and argues that the Director failed to consider the Applicant's hardships in the aggregate.

Regarding financial hardship, the Applicant states that her spouse would be forced to work full time to support his daughter and father and provide for their care. The Applicant and her spouse both stated that the Applicant does not work outside the home and her spouse is employed full time. The federal joint tax returns indicate the Applicant's spouse has an income far above the poverty guidelines. The record does not establish the extent to which the Applicant's spouse's finances may be negatively impacted by the Applicant's separation.

Regarding medical, emotional, and psychological hardship, the record includes a mental health evaluation describing the Applicant's spouse's reported symptoms including, but not limited to, nervousness, inability to relax, fear of losing control, heart palpitations, and indigestion. We acknowledge that he has been diagnosed with generalized anxiety disorder and he would suffer worsening symptoms of anxiety and loneliness upon separation from the Applicant. However, the record does not show that the Applicant's spouse's situation, or the symptoms he is experiencing, are unique or atypical compared to others in similar circumstances. The record does not show that he has any physical or mental health issues that affect his ability to work or carry out other activities, or that he requires the Applicant's assistance as a result.

Regarding the Applicant's stepdaughter and her father-in-law, their hardships may be considered to the extent it causes hardship to the Applicant's spouse, the only qualifying relative in this case. The Applicant indicates that she does not currently work and has assumed the caretaking duties for her spouse and stepdaughter. She claims that her spouse's ability to adequately care for his daughter would be significantly compromised if the Applicant is removed. We note that the Applicant's stepdaughter is currently 20 years-old and does not have any special needs. The record does not demonstrate that the Applicant's adult stepdaughter cannot financially support herself or requires the Applicant's assistance

due to physical or mental health issues that affect her ability to carry out activities. The Applicant's spouse indicates that his father, the Applicant's father-in-law, will need full-time care in the future due to his advanced age and hearing loss. He further indicates that he will not have the physical ability to take care of his father in his home without the Applicant's assistance and he does not have the financial ability to provide nursing home care for this father. The record includes medical documentation for the Applicant's father-in-law, including three MRI reports and an audiogram result; however, the record does not contain an evaluation, diagnosis, or explanation of the need for assistance. The documentation submitted with the waiver and now on appeal does not demonstrate that the Applicant's father-in-law requires financial assistance from the Applicant's spouse or that his other adult children would be unable to financially assist their father.

As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to her spouse upon separation. While the brief submitted on appeal also addresses hardship the spouse would undergo if he were to move to China, because the Applicant's spouse declared the intent to remain in the United States, we need not address the relocation scenario. Although we recognize that the Applicant's spouse may face some hardship upon separation, based on the record, we cannot conclude that when considered in the aggregate, the hardship would go beyond the common results of separation from a loved one and rise to the level of extreme hardship. The record does not establish that the Applicant's spouse faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is denied entry into the United States.

The Applicant has not demonstrated extreme hardship to a qualifying relative if she is denied admission, therefore we need not consider whether she merits a waiver in the exercise of discretion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"). The waiver application remains denied.

ORDER: The appeal is dismissed.