U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25424993

Date: APR. 05, 2023

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of South Korea currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of inadmissibility 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 discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Los Angeles, California Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application) finding the Applicant did not establish that denial of her admission would result in extreme hardship to the Applicant's qualifying relative. The matter is now before us on appeal.

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 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).

II. ANALYSIS

A. Relevant Background and Procedural History

In 2000, the Applicant filed a Form I-539, Application to Extend/Change Nonimmigrant Status with two different USCIS offices and included a counterfeit Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, from different universities with each Form I-539. One of the Forms I-539 was approved. In 2013, the Applicant married K-L-.[1] In May 2018, a week after becoming a naturalized U.S. citizen, K-L- filed Form I-130, Petition for Alien Relative, on the Applicant's behalf and the Applicant concurrently filed Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application). In April 2019, the Form I-130 and adjustment application were approved. In September 2019, the Director sent the Applicant a notice of intent to rescind her LPR status, informing her that she certified the information on her adjustment application was true and correct, and that she was interviewed under oath with respect to her adjustment application and did not disclose filing counterfeit documents with her Form I-539 filings. The Director determined the Applicant was inadmissible to the United States under section 212(a)(6)(C)(i) of the Act at the time of filing of her adjustment application and rescinded her status in January 2020.[2] In October 2019, the Applicant filed a second adjustment application and the Director issued a notice of intent to deny (NOID), explaining, in relevant part, that the Applicant had not applied for a waiver of her inadmissibility.

In April 2022, the Applicant filed her waiver application asserting her U.S. citizen spouse would suffer extreme hardship if her waiver application was denied. Among the supporting documentation submitted was a declaration by K-L-, who did not state whether he would relocate with the Applicant or separate from her should her waiver application be denied. The evidence submitted discussed K-L-'s hardship upon both relocation and separation (i.e., psychological evaluation relating his fears of the Applicant's deportation and having to restart his career in South Korea, identical statements by various family members stating that K-L- would not live in a "normal way" without the Applicant, and one family member stating he cannot imagine K-L- abandoning his law practice in the United States). The Director reviewed the evidence and determined the Applicant had not established extreme hardship to her spouse should they separate. The Director acknowledged K-L-'s statements that the Applicant is his religious guide, that he is completely dependent on the Applicant's care and the Applicant is his soulmate. The Director reviewed the psychological evaluations in the record and noted K-L-'s diagnosis of "Major Depressive Disorder and Generalized Anxiety Disorder," noted his progress, acknowledged the author's statements that K-L-continues to experience severe anxiety and depressive symptoms caused by the Applicant's possible deportation but further noted the author did not recommend immediate psychological or medical treatments. The Director also noted that

[1] Initials are used to protect the privacy of the individuals.
[2] The Applicant does not contest this inadmissibility finding.

K-L- maintained employment while taking care of his family and the Applicant had not established that she would be unable to maintain a relationship with her husband should they separate. The Applicant does not contest the Director's finding.

On appeal, the Applicant states her spouse will face extreme hardship if he relocates with her to South Korea. In support of her assertion, she states K-L- would have difficulty finding a job in the legal field as he is older, would be unable to pay a federal loan in the amount of $47,083, and there is a possibility of nuclear war in the Korean peninsula. Relevant documents submitted in support on appeal include documentation of the loan and articles on the possibility of war.

B. The Applicant Has Not Established Extreme Hardship

In order to establish eligibility for the waiver under section 212(i) of the Act, the Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative, 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 with the applicant. See generally 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/policymanual (explaining, as guidance, the two potential scenarios to consider). An applicant may meet their 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. Id. (discussing, as guidance, how to assess extreme hardship to a qualifying relative). 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. Id. In the present case, however, the Applicant's spouse did not indicate whether he intended to remain in the United States separate from the Applicant or relocate to South Korea if the Applicant is denied admission. The Applicant therefore had to establish that her spouse would experience extreme hardship both upon separation and relocation. Id. (explaining, as guidance, when an applicant submits evidence related to both relocation and separation the USCIS officer should determine whether the qualifying relative has established the scenario more likely to result from a denial of admission). As the Director found the Applicant had not met her burden to establish her spouse would suffer extreme hardship upon separation, the Applicant's waiver application was denied on those grounds.

On appeal, the Applicant includes a declaration by K-L- clearly stating he will relocate with the Applicant to South Korea. However, the Applicant's spouse does not provide a sufficiently detailed statement adequately conveying the reasons why relocation would likely result, provides no explanation for why this statement of intent to relocate was not included in the underlying record or indicate what documents in the record support his intent, all of which weigh against the credibility of his statement. Id. (explaining, as guidance, that a statement of intent should be sufficiently detailed to adequately convey the reasons why either separation or relocation would likely result from a denial of admission and the applicant may submit documentation or other evidence, if available, in support of this statement). Further, while the Applicant asserts that her spouse will suffer extreme hardship upon relocation, she does not provide sufficient documentation in support. With respect to his inability to repay his federal loan, K-L- states he does not want to burden the U.S. government but does not explain why his inability to pay off the loan would result in his extreme hardship. In addition, the Applicant does not provide financial documentation that her spouse would be unable to pay the amount owed.

With respect to K-L-'s assertions that nuclear war is imminent, we acknowledge his concerns, but note the Applicant's submissions do not contain travel warnings from the U.S. Department of State advising U.S. citizens to stay away from South Korea. With respect to K-L-'s inability to find work in South Korea, the Applicant states he no longer has business contacts, law firms prefer younger attorneys as they are more energetic, and he would be unable to act as a consultant with his law degree because he does not have knowledge of the Korean legal market. The Applicant does not provide evidence in support of her statements. Further, K-L-'s declaration, filed with the waiver application, discusses the Applicant's son and brother-in-law's business operations in South Korea, which conflicts with the Applicant's statement that K-L- has no business contacts. While we acknowledge the loss of current employment would be a hardship, it is a common result of deportation and does not amount to extreme hardship. Matter of Pilch, 21 I&N Dec. at 630-31. As the Applicant has not provided material evidence in support of her assertions that her spouse will suffer extreme hardship upon relocating to South Korea, the waiver application will remain denied.

III. CONCLUSION

The Applicant has not established extreme hardship to a qualifying relative, an eligibility requirement for a waiver under section 212(i) of the Act, and therefore remains inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act.

ORDER: The appeal is dismissed.