U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25785380

Date: APR. 26, 2023

Appeal of Hialeah, FL Field Office Decision

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

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 misrepresentation of material facts. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The Director of the Hialeah, FL Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility, concluding the Applicant did not establish extreme hardship to his U.S. citizen spouse, the only qualifying relative.

The Applicant filed motions to reopen and reconsider with the Hialeah Field Office. The Director denied these motions on the basis no waiver is available for a false claim to citizenship, a violation of Section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii). The Director also reaffirmed that the Applicant failed to establish extreme hardship and made a discretionary analysis of favorable and unfavorable discretionary factors. On appeal, the Applicant submits a brief challenging the inadmissibility finding, the extreme hardship finding, and the discretionary analysis made by the Director.

The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (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). The matter is now before us on appeal. 8 C.F.R. § 103.3. Upon de novo review, we will remand 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). 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 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.

With respect to the standard of proof in this matter, petitioners must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. at 376. In other words, petitioners must show that what they claim is "more likely than not" or "probably" true. 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).

If the noncitizen demonstrates the requisite extreme hardship, then they 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 an 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).

Finally, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality." Matter of Chawathe, 25 I&N Dec. at 376. That decision explains that, pursuant to the preponderance of the evidence standard, we "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." Id.

II. ANALYSIS

A. There was No False Claim to Citizenship.

The Director denied the Form I-601 based on lack of extreme hardship. However, the Director made a secondary finding that the Applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii) for making a false claim to citizenship, Upon de novo review, we find that no evidence in the record supports the Director's finding that the Applicant made a false claim to citizenship, therefore the Applicant is eligible for a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), for misrepresentation of material facts.

B. Extreme Hardship

The next issue is whether the Applicant has established extreme hardship to his spouse and three children, as required to qualify for a waiver of inadmissibility under section 212(h)(1)(B) of the Act and, if so, whether he merits the waiver as a matter of discretion. The Applicant does not contest the finding of inadmissibility for misrepresentation of material facts, which is established in the record. We have considered all the evidence in the record, and we conclude that it establishes that the claimed hardships rise to the level of extreme hardship when 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. See 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/policymanual (providing guidance on the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both these scenarios is not required if the applicant's evidence demonstrates 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. In the present case, the record does not contain a clear statement from the Applicant's spouse indicating whether she intends to remain in the United States or relocate to Iran 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.

In support of his waiver request, the Applicant submitted his spouse's statement describing emotional, psychological, and financial hardship she would suffer upon separation and upon relocation together with two psychological reports, country conditions evidence pertaining to Iran, and relevant excerpts of the USCIS policy manual together with tax returns and evidence of their household budget demonstrating the extent of the Applicant's spouse's financial dependence on the Applicant.

The Applicant's spouse describes in detail the Applicant's role in her life and how it impacts her ability to care for her three children. The Applicant's spouse has a prior history of severe depression and suicidal ideations stemming from a rape which led to two prior suicide attempts in her late teens and early twenty's[1] and her current diagnosis of severe depression. The Applicant's spouse states that the Applicant makes it possible for her to stay home and raise their child and their two stepchildren as a full-time mother. She states that one stepchild requires significant attention because she suffers from major depressive disorder and has exhibited suicidal ideation. The stepchild's diagnosis and demands are relevant insofar as how it impacts the level of the Applicant's spouse's hardship and ability to care for her sick daughter while emotionally, financially, and physically supporting all her three children alone if the Applicant leaves the United States.

The Director denied the hardship waiver in a decision dated August 2, 2022, stating that according to the psychological evaluation, "your spouse has some anxiety and depression, but is deemed a

[1] According to the psychological report, the Applicant's spouse does not have active suicidal ideation currently, but passive suicidal ideation was reported.

"healthy" individual." Regarding country conditions, the decision stated, "the country conditions in Iran may preclude your spouse and children from joining you in Iran. However, there are other countries where you could settle."

The Applicant filed a motion to reopen and reconsider to the Director with updated country conditions evidence for Iran. The Applicant's attorney argued that USCIS failed to consider all of the hardship evidence. The Applicant's attorney contends that USCIS' statement "that the separation of [the Applicant's] family "could cause some emotional strain to your wife and children" but that "there is no certainty it would cause any lasting psychosis" is contrary to the record evidence in the case. The Applicant's attorney contends that specific parts of the Applicant's wife's statement, the two psychological reports and country conditions evidence were overlooked or not adequately weighted. The Applicant's attorney also asserts that the Director's decision is contrary to the USCIS Policy Manual which states that country conditions are "Particularly Significant Factors." The Applicant's attorney extensively quotes from the USCIS Policy Manual's discussion of Department of State (DOS) Travel Warnings: "the travel warning would often weigh heavily in support of finding extreme hardship," "significantly increased danger would often support a finding of extreme hardship," and that "the officer should consider the hardship to the qualifying relative resulting from the increased danger to the applicant in the relevant country or region."

The Director's October 2022 denial of the Applicant's motion to reopen affirmed findings in its Augus 2022 decision including that the Applicant's wife described herself as healthy and that the Applicant's spouse denied having any active suicidal ideation, stating:

> USCIS' statement of facts came directly from Dr. L-I-[2] (sic) [expert psychological] evaluation, including [the Applicant spouse's] own self declaration that she is a "healthy" individual. USCIS' response plainly demonstrates that the Service throughly (sic) considered Dr. L-I-'s evaluation....

The Director also stated that it properly evaluated country condition evidence in its hardship determination, "USCIS does not dispute Iranian country conditions, but the country conditions in the aggregate with other factors, do not establish extreme hardship."

On de novo review, we agree with that Applicant's contention on appeal that the Director erred in both their decisions construing the word "healthy" as an overall assessment of the Applicant's spouse's health, both mental and physical. In the context of the entire psychological report submitted to the Director, "healthy" refers to the Applicant's spouse's physical health. In the psychological expert, Dr. L-I-, states that the Applicant's wife is "currently struggling with debilitating symptoms meeting the criteria for a psychological disorder of *Major Depressive Disorder."* (Emphasis in the original). This psychological report states that Applicant's wife's symptoms and mental health history "predispose [the Applicant's spouse] to experience a more severe emotional impact than others when she encounters emotional difficulties." "Moreover, [the Applicant's wife's] emotional suffering will worsen over the years as she watches her son grow up without his father." The psychological report sent to the Director notes that the country conditions in Iran compounds the psychological impact on the Applicant's wife, noting the country's "instability, violence against women and U.S. citizens, the

[2] Initials are used to protect the identity of the individuals.

lack of affordable healthcare; lack of educational opportunities for their daughters; and lack of work and financial resources."

Regarding the viability of the Applicant's spouse visiting Iran or relocating to Iran, we take administrative notice[3] of the current January 2023 State Department Travel Warning, which is Red Level Four, the highest level.[4] The Travel Warning states, "[d]o not travel to Iran due to the risk of kidnapping and the arbitrary arrest and detention of U.S. citizens. Exercise increased caution due to wrongful detentions." (Emphasis in the original). We also take administrative notice of the State Department Country Report on Human Rights which describes the Islamic Republic of Iran as an authoritarian theocratic republic with a Shia Islamic political system based on velayat-e faqih (guardianship of the jurist). The Applicant's spouse is not Muslim and does not speak Farsi. If the Applicant and his spouse were separated, it would not be possible for his spouse to visit him with their children. There is no basis in the record for the Director's observation that there are other countries where the Applicant can settle.

When considering the totality of individualized hardship factors presented in the aggregate along with the security situation in Iran and the normal results of separation and relocation, we find that the Applicant has established that his spouse would experience extreme hardship both if the Applicant is not admitted to the United States and if the spouse and three children relocated to Iran. Although the Director listed positive and negative discretionary factors in its October 2022 decision, the Director's decision did not make a discretionary finding, therefore we will remand this case to the Director to make a determination whether the Applicant warrants a favorable exercise of discretion such that his adjustment of status application may be approved.

C. Discretion

The Director's October 2022 decision listed the following favorable discretionary factors in the Applicant's case: marriage to a U.S. citizen since 2016, father of one child and one stepchild, maintaining employment and lack of criminal record. Other favorable discretionary factors include the Applicant's eligibility for the benefit, his expressed remorse for immigration violations, payment of taxes, country conditions in Iran and indicators of the Applicant's character based on his relationship with his spouse, child and two stepchildren.[5]

The unfavorable discretionary factor is fraud or misrepresentation in obtaining a nonimmigrant visa.[6] The prior denial of two Forms I-485 are not negative discretionary factors. We will withdraw the Director's decision and return the matter for a determination of whether the Applicant warrants a favorable exercise of discretion such that his adjustment of status application may be approved.

---

[3] See Matter of R-R, 20 I&N Dec. 547, 551 (BIA 1992) ("It is well established that administrative agencies and the court may take judicial (or administrative) notice of commonly known facts") (citation omitted).
[4] The July 2022 Travel Warning the Applicant submitted was the same high level of warning.
[5] The Director erroneously noted one stepchild rather than two stepchildren.
[6] The Director erred in characterizing the Applicant's misrepresentation in obtaining a nonimmigrant visa as six distinct unfavorable factors.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. See Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has met that burden. The Applicant has demonstrated that his spouse would experience extreme hardship. Accordingly, we will withdraw the Director's decision and return the matter for a determination of whether the Applicant warrants a favorable exercise of discretion such that his adjustment of status application may be approved.

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