U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27572732

Date: AUG. 22, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant, a native and citizen of Nigeria currently residing in that country, has applied for an immigrant visa. 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 a crime involving moral turpitude, multiple criminal convictions, and fraud or misrepresentation, and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(h), (i), 8 U.S.C. §§ 1182(h), (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. In the case of a waiver under section 212(h) of the Act, the waiver may be granted if the activities for which the noncitizen is inadmissible occurred at least 15 years ago, if the noncitizen's admission would not be contrary to the national welfare, safety, or security of the United States and the noncitizen has been rehabilitated.

The Director of the Nebraska Service Center denied the application, concluding that the record did not establish that the Applicant merited a waiver under section 212(i) of the Act in the exercise of discretion. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant asserts that the Director did not give proper weight to the extreme hardship of the Applicant's spouse when considering the discretionary factors.

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. 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.*

A noncitizen convicted of (or who admits having committed, or who admits committing acts which constitute the essential elements of) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. Section 212(a)(2)(A)(i) of the Act. In addition, a noncitizen convicted of two or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme, and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were five years or more, is inadmissible. Section 212(a)(2)(B) of the Act.

Individuals found inadmissible under either section 212(a)(2)(A)(i) or section 212(a)(2)(B) of the Act may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. Where the activities resulting in inadmissibility occurred more than 15 years before the date of the application, a discretionary waiver is available if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the foreign national has been rehabilitated. Section 212(h)(1)(A) of the Act. A discretionary waiver is also available if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act.

With respect to the standard of proof in this matter, an applicant must establish that he meets 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, an applicant must show that what he claims 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 noncitizen 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). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States,

residence of long duration in this country while in compliance with our immigration laws (particularly where residency began at a young age), evidence of hardship to the foreign national and their family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

Finally, we have determined that "truth is to be determined not by the quantity of evidence alone but by its quality." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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

The Applicant does not contest his inadmissibility on appeal and we incorporate the Director's finding of inadmissibility here, by reference. On Appeal, the Applicant restates facts related to his spouse's care for their adult son, who was diagnosed with autism spectrum disorder, and argues that the Director minimized the effect that caring for their son has on the Applicant's spouse. He also argues that the Director misapplied *In re Correa*, 19 I&N Dec. 130, 134 (BIA 1984), erred by relying on service records related the Applicant's threats against a deportation officer as evidence of a negative discretionary factor, and that the criminal acts he committed that were not CIMTs should not be used as discretionary factors against him.

Upon de novo review, we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); see also *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

On appeal, the Applicant argues that the Director did not give due consideration to the extreme hardship of the Applicant's spouse, in particular the care she provides to their autistic son. To support this assertion the Applicant provided additional articles regarding autism, but notably, did not provide any recent medical documentation regarding his son's special needs or current abilities. The Director determined that extreme hardship exists in this case and appropriately moved to a balancing of the positive and negative discretionary factors. Contrary to the assertions of the Applicant, the Director provided a detailed and reasoned analysis of the positive discretionary factors in this case, including the care that the Applicant's spouse gives to their autistic son, family ties to the U.S. and the evidence of reformation provided from the Applicant's time in Nigeria. The Applicant's assertions that the Director overlooked or minimized evidence is unsupported by the record.

The Applicant further argues that some of his arrests did not result in convictions or were not for CIMTs and occurred more than 20 years ago, and thus cannot be used as part of a discretionary analysis. However, in exercising their discretion, the Director may consider an applicant's arrests that are not for CIMTs, as well as criminal activity that does not result in a conviction. *See Matter of Thomas*, 21 I&N Dec. 20, 23-24 (BIA 1995) (holding that evidence of criminal conduct that has not

culminated in a final conviction may nonetheless be considered in discretionary determinations). The Applicant provided no standing precedent or case law that supports his assertion that discretionary determinations are limited to convictions for CIMTs.

The Applicant also argues that the Director erred by relying on *In re Correa*, 19 I&N Dec. 130, 134 (BIA 1984) to apply less weight to the family ties of the Applicant to the United States because they were acquired after his deportation proceedings. The Applicant states that the Board of Immigration Appeals (the Board) made that decision in the context of a request to reopen deportation proceedings and that it therefore bears no relationship to the Applicant's case. However, the Applicant has not established that the Board intended to limit the examination of after-acquired equities to a particular type of benefit request or discretionary determination. In addition, several circuit courts, including the 9th circuit court where this case arises, have made similar findings regarding the weight of after-acquired equities in discretionary determinations. *See Carnalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9th Cir. 1980) (finding that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408, 416 (BIA 1998), need not be accorded great weight by the director in a discretionary determination); *see also Garcia-Lopes v. INS*, 923 F.2d 72, 74 (7th Cir. 1991) (stating that less weight is given to equities acquired after a deportation order has been entered). In the instant case, by the time he married his spouse in [redacted] 1995, the Applicant had been previously deported from the United States. In addition, the Applicant's U.S. citizen son was born in [redacted] of 2000, after the Applicant's second deportation from the United States. Accordingly, the Applicant has not shown that the Director erred in giving the after-acquired equity of the Applicant's marriage to a U.S. citizen diminished weight as he seeks a waiver of inadmissibility that requires a discretionary determination. Moreover, even if given the full evidentiary weight, the Applicant has not demonstrated that the positive equities in this case outweigh the negative factors.

The Applicant also asserts that the Director's reference to threats made against a deportation officer is unsupported by the record. However, a review of the Form I-213, Record of Deportable/Inadmissible Alien, indicates that the Applicant made openly hostile comments saying "you don't know who you are dealing with" toward a deportation officer in July of 1997. While he objects to the Director's use of this information in the discretionary analysis, the Applicant does not provide any details regarding the incidents described by the Director or any description of his encounters with immigration authorities at the time of his first deportation in 1985 or the second in 1997. The evidence does not indicate that the Director gave this information inappropriate weight, relying more heavily on the Applicant's extensive criminal record and history of immigration violations as the major negative factors in the discretionary analysis.

The Director further stated that the Applicant had not provided any evidence that he had paid court-ordered restitution amounting to more than $20,000. On appeal, the Applicant states that his deportation in [redacted] of 1999 "foreclosed any chance he would have to make restitution" and that the Director's decision clearly indicated that rehabilitation had been established. While the Director noted the passage of time since his convictions and the lack of a criminal record abroad as positive factors, they did not determine that the Applicant had been fully rehabilitated in part due to his failure to pay restitution. On appeal, the Applicant does not provide any evidence that he has been unable to make payments from abroad. Failure to pay restitution or make an attempt to compensate the victims of his crimes is a significant negative discretionary factor that the Director appropriately considered. While we acknowledge evidence in the record of reformation, including that the Applicant was given the title

of "eze[1]" and has a clean criminal record in Nigeria, the letters of support before the Director provide few details regarding his life and work since his deportation from the United States in 1999. In addition, the Applicant himself has not provided any significant details regarding his reformation of character beyond saying that he has not had any encounters with police and is active in his church. The Applicant and his spouse resided together in Nigeria for 11 years following his deportation. The Applicant's spouse chose to relocate to the United States to ensure better educational opportunities for her son. The Applicant and his spouse were aware of his extensive criminal record and history of immigration violations, including his two prior deportations, at the time of her relocation to the United States. Separation is a likely consequence of the Applicant's spouse's decision to return to the United States. Even though the Director determined that the Applicant's spouse would experience extreme hardship without him, the Applicant has not demonstrated that he warrants a favorable exercise of discretion.

After a review of the complete record, including the arguments made on appeal, the Applicant has not demonstrated that he warrants a favorable exercise of discretion. Accordingly, the waiver application will remain denied.

ORDER: The appeal is dismissed.

[1] According to the Applicant, "eze" is a term used for the traditional leader of a community. The Applicant was named "eze" of the [redacted] Community in [redacted] Government Area of [redacted] Nigeria in December 2003.