U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29696703

Date: DEC. 15, 2023

Appeal of Fort Meyers, Florida Field Office Decision

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

The Applicant, a native and citizen of Argentina, 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 that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(i), 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 Fort Meyers, Florida Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding the Applicant did not establish that his qualifying relative, his U.S. citizen spouse, would suffer extreme hardship upon his removal. 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.

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 U.S. citizen or LPR spouse or parent of the noncitizen. 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).

The Applicant filed to adjust status under the Cuban Adjustment Act in 2011 in which he claimed his father was a Cuban national. USCIS concluded the Applicant's father was a citizen of Argentina and that the Applicant had submitted fraudulent documents and thus determined him to be inadmissible under section 212(a)(6)(C)(i) of the Act.[1] The Applicant does not contest the finding of inadmissibility. In July 2022, the Applicant simultaneously filed a family-based adjustment application and the instant waiver application. In support of the waiver application, the Applicant submitted the approved spousal visa petition, his spouse's naturalization certificate, marriage and birth certificates, and financial documents. He asked that the Director provide an opportunity to present additional documents through a request for evidence (RFE). The Director considered the totality of the evidence submitted and denied the waiver application without issuing an RFE, concluding that the Applicant did not establish extreme hardship to his U.S. citizen spouse.

On appeal, the Applicant asserts the Director's failure to issue an RFE violates USCIS policy and requests that the Director reopen or reconsider his waiver application so he may submit documents in response to an RFE. Although 8 C.F.R. § 103.2(b)(8)(iii) gives USCIS the discretion to issue an RFE, neither the Act nor the regulations compel USCIS to do so. *Id.* Further, USCIS policy specifically notes that it has the discretion to issue RFEs but also the discretion to issue a denial without first issuing an RFE. *See* 1 *USCIS Policy Manual* E.6(F)(3), https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6. Thus, the Director had the discretion to deny the waiver application without first issuing an RFE.

In addition to the foregoing, we note here that the form instructions for filing an appeal or motion provide notice to submit additional evidence in support of the appeal. *See* Form I-290B Instructions for Notice of Appeal or Motion,[2] https://www.uscis.gov/sites/default/files/document/forms/i-290binstr.pdf. The Applicant has not presented evidence of hardship on appeal. Therefore, as the Director concluded, the Applicant has not submitted sufficient documentation to establish by a preponderance of the evidence that his spouse would experience extreme hardship. The waiver application will remain denied.

ORDER: The appeal is dismissed.

[1] The Applicant previously filed a waiver application which the Director denied because the Applicant did not establish extreme hardship to his qualifying relative. He appealed the denial, and we dismissed the appeal in January 2022.

[2] Form instructions carry the weight of binding regulations. *See* 8 C.F.R. § 103.2(a)(1) ("Every form, benefit request, or document must be submitted . . . and executed in accordance with the form instructions. . . . The form's instructions are hereby incorporated into the regulations requiring its submission.").