U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29137172

Date: DEC. 22, 2023

Appeal of Long Island, New York Field Office Decision

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

The Applicant, a national of China, has applied to adjust status to that of a lawful permanent resident (LPR). He seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i), for fraud or willful misrepresentation. 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 Long Island, New York Field Office denied the waiver request, concluding that the Applicant did not establish the requisite extreme hardship to his LPR parents, his only qualifying relatives. 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. To establish eligibility for a waiver of this inadmissibility the noncitizen must demonstrate, as a threshold requirement, that denial of admission will result in extreme hardship to their U.S. citizen or lawful permanent resident spouse, or parent. 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

The Applicant does not contest the finding of inadmissibility, which is based on his fraud or willful misrepresentation when he knowingly used a fraudulent passport to enter the United States in 1992. The issues on appeal are whether the Applicant has established extreme hardship to his qualifying relatives and, if so, whether he merits a waiver as a matter of discretion. We have reviewed the entire record and conclude that it is insufficient to show that the individual and cumulative hardships to the Applicant's LPR parents would rise to the level of extreme if the Applicant is denied admission.

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 generally* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual (providing guidance on the scenarios to consider in making extreme hardship determinations). 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. *See id.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Gonzalez Recinas*, 23 I&N Dec. 467 (BIA 2002)). The applicant may meet this burden by submitting a statement from the qualifying relative or relatives certifying under penalty of perjury that the qualifying relative or relatives would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. *See id.* Here, the record does not contain a clear statement from the Applicant's parents indicating whether they intend to remain in the United States or relocate with the Applicant to China or any another country if the waiver application is denied. The Applicant must therefore establish that if he is denied admission, his parents would experience extreme hardship both upon separation and relocation.

The record reflects that the Applicant's parents, who are currently 72 and 71 years old, have resided in the United States since 2011. They have one U.S. citizen daughter, who filed the I-130, Petition for Alien Relative, on their behalf; two LPR daughters; and one son, the Applicant, who all live in the United States. The Applicant is married and has four U.S. citizen children, including three adults and one minor child who is currently 15 years old. The Applicant has submitted the following documentation in support of the waiver application: affidavits from the Applicant, his three sisters, and his father, on behalf of himself and the Applicant's mother; psychiatric evaluations, physician letters, and medical records for the Applicant's parents; and financial and biographical documentation.

The Applicant's parents contend that since they arrived in the United States in 2011, the Applicant has been their only caregiver and financial supporter. The parents indicate they both suffer from medical ailments and physical discomforts; due to their physical pain and anxiety over the Applicant's immigration situation, their mental health has worsened; they are financially dependent on the Applicant; and they rely on him to provide translation and transportation to obtain medical care. The parents state that within their Chinese culture, the male child is responsible for caring for his parents, and their three adult female children are unable to sufficiently care for them due to their own familial obligations and health issues. The submitted psychiatric evaluations and medical records indicate the

parents suffer from Major Depressive Disorder and High Distress Anxiety and various physical ailments, such as arthritis, heart problems, and diabetes, that require regular medical treatment and medication.

The Director concluded, in part, that the Applicant did not establish his parents would suffer emotional, medical, or financial difficulties that would rise to the level of extreme hardship. On appeal, the Applicant submits a report regarding the cultural importance in China of the eldest son as his parents' caregiver and financial supporter. In addition, he cites non-precedent decisions from this office in support of the argument that his unique role as the eldest son is an important factor when evaluating hardship to the parents.[1]

Upon review, the Applicant has still not established that his parents' hardships that would result from separation, considered individually and cumulatively, would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship. The parents assert that they rely on the Applicant as their only caregiver and financial supporter and their three adult female children are unable to sufficiently care for them due to their own familial obligations and health issues. However, the record lacks sufficient documentation to establish that the parents would lack assistance and support from their family members here. For example, though the Applicant's sisters provided affidavits that indicate they are unable to care for their parents and provide financial support, the Applicant did not submit supporting documentation, such as the sisters' medical records, tax returns, monthly expenses, or employment information, to support this assertion.

Similarly, regarding the parents' claim of financial hardship upon separation from the Applicant, while the evidence documents the Applicant's income and we acknowledge the parents may experience some financial difficulty without him, the record does not demonstrate they would face a financial strain that would rise to the level of extreme hardship if he is denied admission. Specifically, though the Applicant provided his tax returns, he has not provided documentation demonstrating his direct monetary support to his parents or reflecting the parents' monthly expenses and financial obligations. Further, as noted by the Director, the tax documentation does not establish that the Applicant consistently claimed his parents as dependents.

In conclusion, although we acknowledge that the Applicant and his parents have a close relationship and the parents will experience difficulties if separated from the Applicant, the totality of the evidence remains insufficient to show that the parents' emotional, financial, and medical hardships would exceed the common results of inadmissibility or removal. The Applicant must establish that denial of the waiver application will result in extreme hardship to a qualifying relative or relatives upon both separation and relocation. As he has not demonstrated such hardship in the event of separation, we cannot conclude that the requisite extreme hardship would result from denial of his waiver application.[2]

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[1] Regarding the non-precedent decisions cited on appeal, we note that because we did not publish the decisions as precedent, they do not bind us in future adjudications. *See* 8 C.F.R. § 103.3(c) (providing that precedential decisions are "binding on all [USCIS] employees in the administration of the Act").

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Because the Applicant has not demonstrated extreme hardship to his qualifying relatives if he is denied admission, we need not consider at this time whether he merits a waiver in the exercise of discretion. The waiver application will remain denied.

ORDER: The appeal is dismissed.