U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24097391

Date: FEB. 23, 2023

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant 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 misrepresentation.

The Director of the Nebraska Service Center denied the application, concluding that the record did not establish that the Applicant's only qualifying relative, her U.S. Citizen fiancé, would suffer extreme hardship if the Applicant were denied admission, as required for a waiver under section 212(i) of the Act. 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. There is a 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, or the U.S. citizen fiancé(e) of a noncitizen applying for a K-1 nonimmigrant fiancé(e) visa. Section 212(i) of the Act; *see also* 8 C.F.R. § 212.7 (explaining that applicants for a K nonimmigrant visa may apply for a waiver of inadmissibility available under section 212 of the Act, approval of which is conditioned upon the noncitizen marrying the U.S. citizen fiancé(e)). If the noncitizen demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. *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).

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. An applicant may submit evidence demonstrating which of the scenarios would result from a denial of admission and may establish extreme hardship to one or more qualifying relatives by showing that either relocation or separation would result in extreme hardship. An 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. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda. In the present case, the record is unclear whether the Applicant's qualifying relative, her U.S. citizen fiancé, would remain in the United States or relocate to Mexico if the Applicant's waiver application is denied. The Applicant must therefore establish that if she is denied admission, her fiancé would experience extreme hardship both upon separation and relocation.

II. ANALYSIS

The Applicant is a citizen and national of Mexico seeking a K-1 nonimmigrant fiancé(e) visa at the U.S. consulate in Mexico City. The Applicant states that upon entry to the United States she will marry T-Q-[1], her qualifying relative fiancée. The Applicant does not contest, and the record supports the Director's determination of, her inadmissibility under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, as described in the Director's decision, which we incorporate here. The Applicant contends that her fiancé would suffer extreme hardship if she were denied admission to the United States and that she is otherwise eligible for a waiver application under section 212(i) of the Act. As evidence of extreme hardship, the Applicant submitted two statements from herself, two statements from T-Q-, letters of support, a 2019 human rights report for Mexico, letters from T-Q-'s business partners, a psychological evaluation for T-Q-, medical documentation for T-Q- and other financial documents. The Director determined that the evidence provided did not establish the T-Q- would experience extreme hardship upon denial of the waiver.

In her brief on appeal, the Applicant asserts that the Director erred by not appropriately weighing T-Q-'s medical condition, financial hardship, or the psychological effects of separation. Specifically, she asserts that because of their separation, T-Q- has been diagnosed with depression and anxious distress which she argues shows he is experiencing hardship beyond that normally associated with separation from a family member. To support the claim of extreme hardship, the Applicant submits on appeal additional documentation regarding T-Q-'s medical condition, employment, and mental health, including two letters from current health care providers, lab results for recent blood tests, financial documents for T-Q-'s business and copies of prescription medication labels.

[1] We use initials to protect the privacy of individuals.

Upon de novo review, we agree with the Director that the Applicant has not established T-Q- would suffer extreme hardship should they remain separated. The record indicates the Applicant and T-Q- met in 2011 and developed a romantic relationship while the Applicant was in the United States working as an au paire. The Applicant later departed the United States, but when she subsequently sought admission, she was removed from the United States pursuant to an expedited removal order under section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1), in 2014. The Applicant has remained in Mexico and maintained a relationship with T-Q- as evidenced by the travel documents and photographs submitted to the Director. The Applicant provided a statement to the Director with the initial waiver application; however, it did not address extreme hardship to her U.S. citizen fiancée. In his initial statement to the Director, T-Q- stated that he cannot imagine living in the United States without the Applicant and that it has been emotionally and financially difficult to juggle his business and family (including aging parents) in the United States with visiting the Applicant in Mexico. In his second statement to the Director, T-Q- stated that he loves the Applicant and has been waiting a long time to marry her and spend the rest of his life with her. He also asserts that he would suffer extreme hardship if separated from the Applicant due to depression and fear for her safety in Mexico City but provides no further information regarding his fears. We also acknowledge the receipt of materials related to country conditions in Mexico. While the materials reference acts of violence generally in Mexico, the Applicant does not assert she has been subjected to any acts of violence herself or is fearful of her safety in Mexico. The record before the Director also included letters of support which provide a detailed description of the Applicant's relationship with T-Q-, references the loneliness T-Q- exhibits during family events without the Applicant present and emphasizes his importance to his family in the United States.

The Applicant also submitted a psychosocial evaluation for T-Q- before the Director, which diagnosed T-Q- as suffering from Major Depressive Disorder (Recurrent Episode, Moderate, with Anxious Distress) to support the claim of extreme hardship. The evaluator indicated that T-Q- reported symptoms of moderate anxiety and depression following the Applicant's relocation and indicated he was currently feeling worried, anxious, sad, and nervous most days though these feelings did not last all day. In documentation provided on appeal, T-Q-'s therapist provides an update of his symptoms related to depression, and his nurse practitioner indicates he has been diagnosed with Attention Deficit and Hyperactivity Disorder (ADHD) and Generalized Anxiety and that medical and behavioral treatment and monitoring will be ongoing. The prescription labels and lab test results provided on appeal are not accompanied by an explanation from T-Q-'s treating physician. The Applicant has provided two letters from Psychotherapy and Counseling Services that confirm he is receiving treatment for his diagnosed conditions of depression, anxiety, and ADHD. The Applicant further states and the evidence supports that T-Q- was diagnosed with Hemochromatosis in 2017 following the Applicant's departure from the United States. She states that T-Q- needs her full support as her spouse with his medical condition.

We acknowledge the evidence of hardship based on T-Q-'s medical and psychological diagnoses and related symptoms, including the Petitioner's and T-Q-'s statements and the latter's medical and psychological records. However, the record on appeal does not establish the severity or frequency of his conditions and symptoms and does not show that they adversely affect his ability to work or carry out other activities, that they would be further aggravated by his continued separation from the Applicant, or that he requires the Applicant's assistance because of his diagnoses. The record further indicates

T-Q- has been successfully managing his medical and psychological conditions with treatment. While T-Q- expresses a preference for having the Applicant present to comfort him during treatment, there is no indication that other family members are unable or unwilling to assist T-Q-, as needed. We do not minimize the evidence of hardship to T-Q- resulting from his medical and psychological conditions and related symptoms; however, the record does not show that the emotional and medical hardship as described is more than one would normally expect from separation from a loved one. *See Matter of Pilch*, 21 I&N Dec. at 627.

The Applicant also asserts financial hardship to T-Q- upon relocation to Mexico. However, apart from the general assertion that travel to Mexico is financially detrimental, T-Q- provides no additional probative testimony to establish he would suffer financial hardship upon continued separation from the Applicant.

Even considering the evidence in its totality, the record remains insufficient to show that the Applicant's qualifying relative's claimed financial, emotional, and physical hardships would be unique or atypical, rising to the level of extreme hardship, if he remains in the United States while the Applicant continues to live abroad due to her inadmissibility.

As explained, since the Applicant did not provide a statement of T-Q-'s intent regarding whether he would relocate to Mexico or remain in the United States if the Applicant's waiver application is denied, the Applicant must establish that denial of the waiver application would result in extreme hardship to T-Q- both upon separation and relocation. As the Applicant has not established extreme hardship to her qualifying relative in the event of separation, we cannot conclude she has met this requirement.

Because the Applicant has not demonstrated extreme hardship to a qualifying relative if she is denied admission, we need not consider whether she merits a waiver in the exercise of discretion. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.