U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24403332

Date: FEB. 27, 2023

Appeal of Harlingen, Texas Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico, 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).

The Director of the Harlingen, Texas Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the record did not establish that the Applicant's U.S. citizen spouse, his claimed qualifying relative, would experience extreme hardship if the waiver was not granted. The Applicant appealed the Director's decision to us. On appeal, the Applicant contends, among other things, that the Director erroneously discounted evidence of hardship in finding there was no evidence of extreme hardship to a qualifying relative. The Applicant argues that he established the requisite extreme hardship to his spouse and father, who should also be considered a qualifying relative, and that a favorable exercise of discretion is warranted.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon our de novo review, as explained below, 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. If the noncitizen demonstrates the existence of the required hardship, then they must also show that U.S. Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver. 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).

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. Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. 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. 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 spouse and father 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 he is denied admission, his spouse and father would experience extreme hardship both upon separation and relocation.

II. ANALYSIS

The Applicant does not contest his inadmissibility, as described in the Director's decision, which we incorporate here. The Applicant's spouse states that she and the Applicant have been together for more than 28 years, have three adult children together, and that the Applicant assists with some bills, such as the water, electric, and telephone. She explains that she works but might lose her home without the financial assistance of the Applicant; a letter from July 2020, addressed to the Applicant's spouse, indicated the mortgage was in default and contractually due for November 1, 2019. The Applicant's spouse further states she has a history of depression and is anxious regarding her husband's future, and after she was evaluated by a psychologist, antidepressant medication and counseling was recommended. She maintains that if she is separated from the Applicant, their children will suffer emotionally, and she will suffer extreme hardship financially, mentally, and physically. In addition, she contends that if she relocates to Mexico with the Applicant, she will experience extreme hardship due lower living standards, the loss of educational opportunities for the children, and the inability to continue earning the same level of income.

On appeal, the Applicant further argues his father, a U.S. citizen, is also a qualifying relative and would suffer extreme hardship upon separation from his son.[1] In support of this argument, the Applicant cites his father's history of prostate cancer, as well as the financial and physical support he provides for his father.

[1] We note the Applicant refers to his father as an "LPR" – or lawful permanent resident – throughout his brief on appeal. However, the record contains a Certificate of Naturalization establishing his father is a U.S. citizen.

Although we are sympathetic to the family's circumstances, we conclude that if the Applicant's spouse remains in the United States without the Applicant, the record is insufficient to show that her hardship would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The record includes a psychological evaluation describing the Applicant's spouse's reported symptoms including, but not limited to, insomnia and anxiety. Although we acknowledge that she has been diagnosed with mild to moderate persistent depressive disorder and adjustment disorder with anxiety, and antidepressant medication and counseling have been recommended should symptoms increase, the record does not show that the Applicant's spouse's situation, or the symptoms she is experiencing, are unique or atypical compared to others in similar circumstances. The record does not show that she has any physical or mental health issues that affect her ability to work or carry out other activities, or that she requires the Applicant's assistance as a result. The documentation submitted with the waiver and now on appeal does not indicate the Applicant's spouse would experience financial hardship in the Applicant's absence. Although the Applicant claims he is employed and contributes to the household finances, the record does not contain evidence of his employment, earnings, or specific financial contributions, such as paystubs, W-2s, federal income tax returns, or bank statements. As there is limited evidence of the Applicant's financial contributions to the household, we are unable to determine the extent to which his spouse's finances may be negatively impacted by his relocation to Mexico. In addition, there is no indication that other family members – specifically the Applicant's adult daughters – are unable or unwilling to assist the Applicant's spouse, as needed. In fact, one of the Applicant's daughters filed a Form I-864, Affidavit of Support Under Section 213A of the INA, for the Applicant, listing her physical address as that of the Applicant and his spouse. There is no evidence to indicate why the Applicant's daughter would be unable to likewise provide financial support to the Applicant's spouse, with whom she resides.

Similarly, the record is insufficient to establish the Applicant's father would suffer extreme hardship if he were separated from the Applicant. Despite previously suffering from prostate cancer in 2016, a letter from the Applicant's father's doctor states he is in a "stable" health condition, and there is no evidence presented that he is currently undergoing treatment for cancer. Although the record indicates the Applicant provides some financial and physical assistance to his father, we also note the Applicant has four adult siblings living in the same town as his father; there is no explanation in the record as to why any of them, or other nearby family members, would be unable or unwilling to provide assistance to their father, as needed.

Regarding the Applicant's children, although their hardship may be considered to the extent it causes hardship the Applicant's spouse or father, the only qualifying relatives in this case, we note that the couple's children are all currently adults, and statements from the Applicant and his spouse in the record indicate they are in good health, and do not have any special needs. Based on the evidence in the record, it is not clear why the adult children would be unable or unwilling to assist the Applicant's wife and father such that the hardship they experience is reduced. We acknowledge separation from the Applicant will likely cause his adult children emotional hardship, which is a factor we have considered to the extent it will affect the Applicant's qualifying relatives – his spouse, in particular. However, even considering all of the evidence in its totality and taken in the aggregate, the record remains insufficient to show that the Applicant's qualifying relatives' claimed financial, mental, and physical hardships would be unique or atypical, rising to the level of extreme hardship, if they remain in the United States while the Applicant returns to live abroad due to his inadmissibility.

As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to his spouse and father both upon separation and relocation to Mexico. As the Applicant has not established extreme hardship to his spouse and father in the event of separation, we cannot conclude he has met this requirement. Because the Applicant has not demonstrated extreme hardship to his qualifying relatives if he is denied admission, we need not consider whether he merits a waiver in the exercise of discretion. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.