U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23905290

Date: FEB. 27, 2023

Appeal of Las Vegas, Nevada Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident (LPR) 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 Las Vegas, Nevada Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application) finding the Applicant did not establish that denial of her admission would result in extreme hardship to the Applicant's qualifying relative. The matter is now before us on appeal.

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 foreign national 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 foreign national. 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

A. Relevant Background and Procedural History

The Director summarized the procedural history in the decision denying the Applicant's waiver application. As the Applicant does not contest these facts, we hereby incorporate them by reference and add the following: In September 2020, the Applicant filed Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application). In the decision denying the adjustment application, the Director explained that during her interview for adjustment, the Applicant testified she willfully and intentionally misrepresented material facts when she entered the United States in 1999. Based on this testimony, the Director found the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act.[1] The Applicant does not contest her inadmissibility. On the Applicant's waiver request, she included a statement regarding extreme hardship: "My husband will not be able to leave the U.S. and will suffer without me. He is a veteran who honorably served this country. He has 50% custody of his son."[2] Included with the Applicant's waiver application was an affidavit from her spouse describing the hardship he would face. The Applicant's spouse says, in relevant part:

> I work as an Owner Operator in a trucking industry and own my own truck.[3] Now that we are in process of her immigration status, I know she wants me to be with her through this. I know as a soldier we don't abandon out comrades, so I will not abandon my wife. . . . I share custody with the mother of my son who is almost 15. If [the Applicant] goes back to Canada, I will have to choose between staying here with my son or going to join my wife.

The Applicant's 14-year-old stepson also provided an affidavit stating if the Applicant "were to be deported . . . my dad . . . would possibly leave and join [her]. . . . If he did I wouldn't be able to see him anymore. . . . I regularly spend the night at my Dads house and enjoy it."

Also included were affidavits by the Applicant's sisters-in-law and father-in-law, who describe the Applicant's loving nature, the positive influence she has been on all of their lives, including her stepson, who is bullied and has confidence issues. The Applicant also submitted a letter authored by a clinical psychologist with the Department of Veterans Affairs dated February 2022 stating the Applicant's spouse "has been provisionally diagnosed with Adjustment Disorder with Anxiety" and

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[1] On appeal, the Applicant asserts that the Director did not discuss her inadmissibility in the decision denying her waiver application. However, the Director discussed the Applicant's inadmissibility both in a Notice of Intent to Dismiss and in her denial of the Applicant's adjustment application.

[2] The Applicant included a copy of her spouse's divorce documents, which included the custody arrangement of his son. According to the document, the Applicant's spouse shares joint custody of his son, and primary physical custody is with his ex-wife.

[3] The Applicant provided documents and certificates from the State of Nevada evidencing her spouse is the president of a transportation corporation and leases a truck.

the "current treatment plan includes participation in brief individual psychotherapy, typically at least 4 sessions, and he may be referred for additional services/longer-term care as needed."

The Director's decision denying the waiver application explained that the affidavits by Applicant's in-laws would not be considered as they were not relevant to the hardship analysis, the financial documents provided did not establish that the Applicant's spouse would suffer extreme financial hardship, as her spouse produces a majority of the household's income, and her spouse's mental health issues are being managed with a treatment plan. On appeal, the Applicant asserts that the Director did not discuss the favorable and adverse factors in her case, ignored relevant precedents, policies, and procedures raised in the brief filed with the waiver application, did not properly weigh her spouse's medical issues, and did not factor in her spouse's custody arrangement.

B. The Applicant has not established extreme hardship

In order to establish eligibility for the waiver under section 212(i) of the Act, the Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative, in this case her U.S. citizen spouse. 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 with the applicant. See generally 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/policymanual (explaining, as guidance, the two potential scenarios to consider). An applicant may meet their 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. Id. (discussing, as guidance, how to assess extreme hardship to a qualifying relative). 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. Id. In the present case, however, the Applicant's spouse does not clearly indicate whether he intends to remain in the United States separated from the Applicant or relocate to Canada if the Applicant is denied admission. The Applicant must therefore establish that her spouse would experience extreme hardship both upon separation and relocation. Id. (explaining, as guidance, when an applicant submits evidence related to both relocation and separation the USCIS officer should determine whether the qualifying relative has established the scenario more likely to result from a denial of admission).

Although we are sympathetic to the family's circumstances, if the Applicant's spouse remains in the United States without the Applicant, the record is insufficient to show that his hardship would rise to the level of extreme hardship beyond the common results of removal or inadmissibility. The record includes a letter by a clinical psychologist provisionally diagnosing the Applicant's spouse with adjustment disorder with anxiety. However, the psychologist explains the Applicant's spouse has a current treatment plan and may be referred for additional services as needed. The letter does not specify whether the Applicant plays a role in his treatment or how separation would affect the Applicant's spouse. For example, as discussed by the Director, the Applicant has not presented evidence establishing that the Applicant's spouse was unable to manage his care prior to meeting the Applicant approximately four years ago. While we acknowledge the testimony contained in the affidavits describing how the Applicant has helped reunify the Applicant's spouse's family and has had a positive impact on her stepson, this evidence does not address how separation would impact her spouse's life, e.g., economically, socially, or culturally, exceeding what is usual or expected should

she be denied admission. Regarding the hardship described by the Applicant's stepson, his statements only relate to the Applicant's spouse relocating.

Returning to the Applicant's statements that the Director ignored relevant precedents, policies, and procedures, the Applicant has not specifically identified how the Director erred and upon de novo review of the record, even considering all of the evidence in its totality, the Applicant has not established that her spouse's claimed hardship rises to the level of extreme hardship, if he remains in the United States while the Applicant returns to live in Canada due to her inadmissibility.

As the Applicant has not established extreme hardship to her spouse in the event of separation, we need not address her hardship claim with respect to her spouse relocating to Canada. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("[C]ourts 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). Further, 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.[4] The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.

[4] With respect to the Applicant's assertions that the Director did not address the discretionary factors in her case, the discretionary analysis is a separate, additional component of adjudicating the waiver request and is typically assessed after an officer has determined that the Applicant meets all applicable threshold eligibility requirements. See generally 1 USCIS Policy Manual E.8 (discussing, as guidance, when in the adjudication process discretion is assessed).