U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23548232

Date: JAN. 10, 2023

Appeal of Los Angeles County, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

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 into the United States 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 U.S. citizen or lawful permanent resident spouse or parent of the foreign national. Section 212(i) of the Act.

The Director of the Los Angeles County, California Field Office found the Applicant inadmissible for engaging in fraud and material misrepresentation to obtain admission to the United States. The Director then denied the waiver, concluding the Applicant was no longer eligible to apply for a waiver since his Form I-485 adjustment of status application was denied,[1] and did not establish extreme hardship to his U.S. citizen spouse, his only qualifying relative, in the event of his continued inadmissibility. The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Applicant does not contest his inadmissibility finding, (he admits that he fraudulently used a U.S. passport to gain admission to the United States prior to 1996, which he had obtained using a relative's birth certificate), which is supported by the record. He contends that the Director applied an incorrect hardship standard to his case and did not consider hardships to his spouse in their totality. In support of the appeal, he submits a brief and additional hardship evidence.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

[1] USCIS records show that the Applicant later filed motions to reopen and reconsider the denial of his Form I-485 application which remain pending before the Director.

The Applicant must demonstrate that the refusal of his admission would result in extreme hardship to his 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 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. *See generally* 9 *USCIS Policy Manual* B 4(B), https://www.uscis.gov/policymanual. In the present case, the record is unclear regarding whether the Applicant's spouse 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 qualifying relative would experience extreme hardship both upon separation and relocation.

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). If the foreign national demonstrates the existence of the required extreme 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.

The Director found that the record did not establish hardship rising to the level of extreme hardship, individually considering the evidence of emotional, financial, and medical hardship, then concluding that such hardships did not rise to the level of extreme hardship. On appeal, the Applicant asserts that the Director erred in analyzing the hardship in his case by applying incorrect standards. Specifically, the Applicant asserts that the Director misstated the holding in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996) that "[e]xtreme hardship is hardship that that is unusual or beyond that which would normally be expected upon deportation," instead stating that the court held that "extreme hardship is beyond what should normally be expected by a person in the same situation."

While we agree with the Applicant that the Director paraphrased but did not cite verbatim the holding in *Perez v. INS*, the Applicant has not adequately explained how the Director's statement resulted in the application of an incorrect standard of proof in this case. Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests.[2] Accordingly, the "preponderance of the evidence" is the standard of proof governing this waiver application. *See generally 1 USCIS Policy Manual*, E.4(B), https://www.uscis.gov/policy-manual. While the Applicant asserts on appeal that he has provided evidence sufficient to demonstrate

[2] *See Matter of Chawathe*, 25 I&N Dec. at 375 (AAO 2010); *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965).

his eligibility for the waiver, he does not further explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying it.

Based on our de novo review of the evidence in this case it does appear however, that the Director erred in the method of analysis because each hardship factor (emotional, financial, and medical) was individually dismissed as not reaching the extreme hardship standard and these difficulties do not appear to have been sufficiently considered in the aggregate. 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).

Furthermore, the Director also seems to not properly weigh the hardship factors surrounding the spouse's medical conditions, as well as the difficulties of transferring her medical care to Mexico if she were to relocate. In addition, the Director appears to not fully consider important hardship factors such as the length of the spouse's 50-year marriage to the Applicant; her years of reliance on the Applicant for financial and emotional support not only for herself but for the care of her infirm family members; and her extensive family and community ties to the United States (with no current ties to Mexico).

On appeal, the Applicant submits new evidence, including statements from the Applicant and other family members which point to other errors in the Director's analysis of the evidence. For instance, the Director discussed the evidence submitted to show that the Applicant assists his spouse in the care of her sister, who has had two strokes and has uncontrolled diabetes, noting that the sister had given the spouse power of attorney (POA) over her affairs. The Director concluded that since the sister had assigned the POA just to her, the Applicant had not sufficiently explained the extent to which the spouse relies on him to help make decisions regarding her sister's care, and why the spouse generally needs such assistance from the Applicant. The Applicant points out on appeal that the sister gave the POA to *both* the Applicant and his spouse, which is supported by the previously submitted POA in the record. The Applicant reasserts on appeal that he, not his spouse, is largely responsible for the oversight of his sister-in-law's care.

The newly submitted statements on appeal from the couple's adult children address other evidentiary concerns that the Director expressed in the denial of the application regarding the extent of the spouse's emotional, medical, and financial reliance upon the Applicant during the course of their 50-year marriage, which they assert continues to the present day.

For the foregoing reasons, we will withdraw the Director's decision and remand the matter back to the Director to consider this evidence in the first instance, along with the other evidence in the record within a new hardship analysis that considers individual hardship factors that may not rise to the level of extreme in the aggregate, and if necessary, a discretionary determination, making sure to include any extreme hardship finding as a significant positive discretionary factor. The Director may request any additional evidence considered pertinent to the new determination and any other issues.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.