U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22678812

Date: JAN. 12, 2023

Appeal of Philadelphia Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Israel, 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), for fraud or misrepresentation.

The Director of the Philadelphia Field Office denied the application, concluding that the record did not establish that her U.S. citizen spouse, S-J-,[1] would experience extreme hardship should she be removed from the United States. 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.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), renders inadmissible 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, admission into the United States, or other benefit provided under the Act. Section 212(i) of the Act provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or LPR spouse or parent of the noncitizen.

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

[1] We use initials to protect individuals' identities.

level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

The issues on appeal are whether 1) the Applicant is inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act for misrepresenting her marital status to U.S. Citizenship and Immigration Services (USCIS) and submitting a forged divorce certificate, 2) she has demonstrated that her qualifying relative will suffer extreme hardship if the inadmissibility is not waived, and 3) if so, she merits a waiver as a matter of discretion.

As explained by the Director and incorporated by reference here, the Applicant concealed her prior marriage to G-H-[2] on multiple forms she signed under penalty of perjury and submitted to USCIS in 2007 and willfully misrepresented a material fact regarding her relationship with him during a sworn interview with a USCIS official in January 2009. In response to a February 2009 notice of intent to dismiss Form I-130, Petition for Alien Relative, the Applicant submitted a divorce certificate which listed the date of divorce as [redacted] 2004.[3] In a subsequent sworn interview in 2016, she admitted to the prior marriage, but stated they were divorced in 2004. In 2017, the divorce decree was determined to be a forgery.

On appeal, the Applicant does not contest that she concealed her prior marriage to G-H- and willfully misrepresented the true nature of their relationship while seeking an immigration benefit. She is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act. The Applicant does contend that, because she did not obtain the divorce decree (G-H- provided it), she had no reason to believe it was not valid. However, her explanation, especially in light of her previous concealments and misrepresentations, is not persuasive and does not overcome the Director's conclusions. For example, although the divorce decree indicated that she and G-H- divorced in 2004, she listed G-H- as her husband on her 2006 nonimmigrant visa application.[4] We also note that the Applicant has not explained why she would conceal and misrepresent her true relationship with G-H- if she believed they were legally divorced prior to her marriage to S-J- in 2007.

Because the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, she must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives which, in this case, is S-J-. 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* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (providing, as guidance, the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both scenarios is not required if the applicant's evidence demonstrates 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 Recinas*, 23 I&N Dec. 467 (BIA 2002)). The Applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that they would either relocate with the Applicant or would remain in the United States if the Applicant is denied

[2] G-H- is the father of her two children born in 1998 and 2004.

[3] The notice informed the Applicant that, without evidence of the termination of her marriage to G-H-, she was ineligible for the requested benefit.

[4] If the Applicant believed she was divorced in 2004, then she may have committed willful misrepresentation of a material fact on her 2006 nonimmigrant visa form.

admission. *See id.* As the record does not contain a statement from S-J- indicating his intent, the Applicant must establish that if she is denied admission, S-J- would experience extreme hardship upon both separation and relocation.

Documentation submitted with the waiver application included, but was not limited to, a statement from S-J- and a psychological evaluation report from a licensed psychologist. In his personal statement, S-J- contends that separation would result in significant financial hardship as they would lose their garage door repair and installation business, as well as their real estate property management business. In addition, S-J- states that he would lose his home and young children. He explains that since he cannot take care of the children by himself, the Applicant would need to take them to Israel as she has family there to help take care of them.

According to the psychological evaluation report, S-J-'s mental health functioning is highly dependent on social support and the Applicant is his closest source of emotional and practical support. The report concludes that without the Applicant, S-J- "would be left very socially isolated, which would be a risk factor for worsening problems with anxiety and depression, which could compromise his ability to function at work and in caring for their four children." The Director acknowledged the financial and emotional hardships S-J- would face due to family separation but determined that the evidence submitted was insufficient to show that the hardships would rise to the level of extreme if the Applicant was denied admission to the United States.

On appeal, the Applicant asserts that S-J- "will experience hardship far and beyond the "normal" hardship that results from marital separation." As evidence, the Applicant submits a second psychological evaluation report from the same psychologist, which states that S-J-'s mental health has declined in the past two months and that he now shows symptoms of Major Depressive Disorder. The report further indicates that he presents "with substantial functional impairment across several areas of his life, including social interactions, parenting and career" and that he is highly dependent on the Applicant to help manage these areas of his life. The report concludes that if he lives separate from the Applicant, there is the potential for worsening mental health for S-J-, including the likelihood of increased depression, paranoia, and suicide.

We have carefully reviewed the report and acknowledge the hardships the Applicant's spouse has experienced and recognize that he may experience additional emotional hardship if he is separated from the Applicant. However, although the evaluation suggests that the Applicant's spouse is prone to depression, the record does not sufficiently show that S-J- has physical, behavioral, or mental health issues that affect his ability to work or carry out other activities. We note, for example, that S-J- "works full-time as a property manager and" owns another business in which the Applicant "manages the customer service end of things." The Applicant has not established that S-J- could not hire someone to fill that role. In addition, there is no indication that other family members are unable or unwilling to assist the Applicant's spouse, as needed. For instance, as stated in the reports, S-J- has a maternal aunt whom he meets with once a week, and they enjoy playing tennis together. In addition, S-J- has an adult son that recently graduated from college and lives with them. Regarding the couple's other children, although their hardship may be considered to the extent it causes hardship to S-J-, the only qualifying relative in this case, we note that the couple's children are currently 18, 12, and 6 years

old, and do not have any special needs.[5] We are sympathetic to the couple's circumstances and the emotional stress involved, but the record does not show that the Applicant's spouse's situation, or the symptoms he is experiencing, are atypical compared to others who are facing separation or relocation due to a spouse's inadmissibility and rise to the level of extreme hardship, even when considered in the aggregate.

As the Applicant has not established extreme hardship to her spouse in the event of separation, we cannot conclude she has met the requirement that denial of the waiver application would result in extreme hardship to her qualifying relative upon both separation and relocation. In addition, because the Applicant has not demonstrated extreme hardship to her qualifying relative if she is denied admission to the United States, we need not consider whether she merits a waiver in the exercise of discretion. The waiver application will remain denied.

ORDER: The appeal is dismissed.

[5] We note that the six-year-old has some speech delays and is receiving treatment.