U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26985775

Date: July 19, 2023

Appeal of Boston, Massachusetts Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Director of the Boston, Massachusetts Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), to waive the Applicant's inadmissibility, concluding that she had not established extreme hardship to her U.S. citizen spouse as required to demonstrate eligibility for a discretionary waiver under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). On appeal, the Applicant asserts her eligibility for the waiver.

The Applicant bears the burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. See Matter of Christo's Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). The matter is now before us on appeal. 8 C.F.R. § 103.3. Upon de novo review, we will dismiss the appeal.

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, 8 U.S.C. § 1182(a)(6)(C)(i). 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 noncitizen. Section 212(i) of the Act. If the noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. 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. See generally 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda. 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. 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 id. In the present case, the record is unclear whether the Applicant's spouse would remain in the United States or relocate to Jamaica if the Applicant's waiver application is denied. The Applicant must, therefore, establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

The record establishes that the Applicant is a citizen of Jamaica. The Director determined the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact, and the Applicant, who is seeking adjustment of status, therefore filed this Form I-601 to waive her inadmissibility. In denying the Form I-601, the Director determined that the Applicant was not eligible for a waiver under section 212(i) of the Act because she had not established extreme hardship to her U.S. citizen spouse, O-S-.[1]

On appeal, the Applicant does not contest the inadmissibility finding. The Applicant submits a brief contending that she established eligibility for the waiver based on extreme hardship to O-S- and that the Director failed to consider all the hardship to her qualifying relative. The Applicant's brief does not point out any material errors in the Director's decision, but rather restates the facts in the record before the Director and asks that we reconsider it with humanitarian concerns and family unity in mind. The Applicant disagrees with the Director's weighing of the hardship in the established record and the tone of the decision.

Upon consideration of the entire record, including the arguments made on appeal, we adopt and affirm the Director's ultimate determination with the comments below. See Matter of P. Singh, Attorney, 26 I&N Dec. 623, 624 (BIA 2015) (citing Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994)); see also Urukov v. INS, 55 F.3d 222, 227–28 (7th Cir.1995)(If a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings provided the tribunal's order reflects individualized attention to the case).

We acknowledge the assertions around the tone in the Director's decision and weighing of the hardship factors but, nonetheless, the record does not support a determination of extreme hardship. The Applicant's spouse still has not clarified whether he intends to relocate or separate and, as the Director articulated, the Applicant has not met her burden of establishing extreme hardship upon separation. Because separation hasn't been established, we need not address relocation.

The Director considered the Applicant's claimed hardships individually and in the aggregate, finding the documentation regarding psychological, emotional, and economic hardship, among other

[1] Initials are used to protect the identity of the individual.

hardships, to O-S- does not meet the Applicant's burden. The record evidence includes statements from O-S- and the Applicant, a letter from a chiropractor, a psychologist's report, a social worker's report, financial documents, and documents in connection with the Applicant and her spouse's two children (born [redacted] 2003 and [redacted] 2021). The Applicant's spouse adjusted status through marriage to a U.S. citizen in 2013, naturalized in 2016, and soon thereafter divorced his U.S. citizen spouse. The Applicant's spouse rekindled the relationship with the Applicant, and they married in [redacted] 2017.

We note that the record reflects that O-S- sought counseling for childhood trauma in connection with two Form I-601 waivers filed by the Applicant, in 2018 and in 2022. There are no records of continuous counselling between those two evaluations. Likewise, there is no evidence in the record that after December 2021, the Applicant's spouse continued to see a therapist. The Applicant's older son is an adult who was raised in Jamaica. Immediate family of the Applicant's and her spouse reside in Jamaica. The Applicant lived independently in Jamaica and worked as a certified nurse assistant prior to her 2016 entry to the United States. The Applicant states her spouse is employed as a server and cook in a restaurant and "makes good money" but the couple also has incurred debt including a mortgage, credit card debt, and car leases.

The record, reviewed in its entirety and considering the hardship factors discussed in Matter of Pilch, 21 I&N Dec. at 630-31, does not support a finding that the Applicant's spouse will face extreme hardship if the Applicant lives in Jamaica. The record does not establish that the Applicant's spouse faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or child is denied entry into the United States. The hardships the Applicant enumerates do not rise to the level of "extreme" as contemplated by statute and case law.

Although we are sympathetic to the Applicant and her spouse'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 the hardship to him would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Considering all of the evidence in its totality, the record is insufficient to show that the Applicant's spouse's claimed financial, mental, psychological, 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 returns to live abroad due to her inadmissibility.

As noted above, because the Applicant has not specified whether her spouse would separate from her or relocate to Jamaica with her, she must establish that denial of the waiver application would result in extreme hardship to her spouse both upon separation and relocation to Jamaica. As the Applicant has not established extreme hardship to her spouse in the event of separation, we cannot conclude she has met this requirement. Thus, we need not reach the question whether relocation would cause extreme hardship to the qualifying relative, and we reserve that issue. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that "courts 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).

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v), the burden of establishing that the application merits approval remains entirely with the Applicant.

Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not sustained that burden. Accordingly, the waiver application remains denied.

ORDER: The appeal is dismissed.