U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27413714

Date: JULY 28, 2023

Appeal of Santa Ana, California Field Office Decision

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

The Applicant, a national of Guatemala, seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C.§ 1182(i), to adjust status to that of a lawful permanent resident. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Santa Ana, California Field Office denied the waiver request, concluding that the Applicant did not establish the requisite extreme hardship to her U.S. citizen mother, her only qualifying relative. The matter is now before us on appeal.

On appeal, resubmits previously provided evidence and asserts that the Director erred by failing to consider the effect of her sister's death as a factor relevant to her mother's hardship.

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 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. To establish eligibility for a waiver of this inadmissibility the noncitizen must demonstrate, as a threshold requirement, that denial of admission will result in extreme hardship to their U.S. citizen or lawful permanent resident spouse, or parent. 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).

In addition to demonstrating the requisite extreme hardship, the applicant must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

II. ANALYSIS

The Director determined that the Applicant is inadmissible to the United States for fraud or misrepresentation, because she attempted to enter the United States in 1996 as an impostor. The Applicant does not contest this determination.[1] The issues on appeal are whether the Applicant has established extreme hardship to her qualifying relative and, if so, whether she merits a waiver as a matter of discretion.

We have reviewed the entire record and conclude that it is insufficient to show that the individual and cumulative hardships to the Applicant's U.S. citizen mother would rise to the level of extreme if the Applicant is denied admission.

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/policy-manual (providing guidance on the scenarios to consider in making extreme hardship determinations). 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. *See id.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Gonzalez Recinas*, 23 I&N Dec. 467 (BIA 2002)). The applicant may meet this burden by submitting a statement from the qualifying relative or relatives certifying under penalty of perjury that the qualifying relative or relatives would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. *See id.* Here, the record does not contain a clear statement from the Applicant's mother indicating whether she intends to remain in the United States or relocate with the Applicant to Guatemala or any another country if the waiver application is denied. The Applicant must therefore establish that if she is denied admission, her mother would experience extreme hardship both upon separation and relocation.

The record reflects that the Applicant's mother is currently 61 years old. She has been residing in the United States for the past 40 years and is married to a U.S. citizen, who is a native of Mexico. She has seven adult children (including the Applicant) who live in the United States; five of her children are U.S. citizens. The Applicant has two minor U.S. citizen children, one of whom is currently six,

[1] The record reflects that in 1996 the Applicant sought admission to the United States with a Form I-186 (Border Crossing Card) issued to someone else. During her adjustment of status interview in May 2021, she testified that a "coyote" gave her an identification document of a person who looked like her, and presented it on her behalf to a U.S. immigration officer when he drove her and other migrants across the border.

and the other two years old. In support of the instant waiver request the Applicant submitted a personal declaration; a statement from her mother and the mother's medical records; her own children's birth certificates and school documents; her sister's death certificate, a letter from a local Guatemalan government official; online articles discussing violence against women in Guatemala; a U.S. Department of State's Guatemala Travel Advisory; and letters attesting to the Applicant's character. The Applicant stated that if she is not allowed to remain in the United States, her mother would experience emotional, financial, and medical hardships. The Applicant explained that her younger sister was shot and killed in Guatemala in 2014, and her mother feared she would meet the same fate if she were to return there. She further stated that waiver denial would also result in economic and medical hardships to her mother, because she would no longer be able to help her mother pay rent and because her mother's health was deteriorating. The Applicant also explained that her older child was under supervision with an Individual Education Plan at his school, and her mother would not be able to care for her children in her absence because she was already responsible for her two other grandchildren. The Applicant's mother stated that the Applicant supported her emotionally and financially by helping her pay the rent, and she would lose her home if she were to lose that support. The mother indicated that she would be unable to take care of the Applicant's children because she had thyroid problems, high cholesterol, arthritis, and other health issues. She confirmed that she feared for the Applicant's life because her other daughter was killed in Guatemala, and that the Applicant's return there would also endanger the lives of her elderly parents who live in Guatemala, because people who come from the United States are believed to have a lot of money.

The Director acknowledged these statements and evidence, advising the Applicant that the information concerning her children and other relatives was not considered, because they were not her "qualifying relatives" for the purposes of the waiver under section 212(i) of the Act. The Director then denied the waiver request concluding that the remaining evidence was not sufficient to establish that the Applicant's removal from the United States would cause her mother a hardship that is above and beyond the usual hardship involved in every removal case.

The Applicant asserts that the Director erred by not affording any weight to the hardship her children will experience upon separation, and we agree. We note, however, that any such hardships to non-qualifying relatives may be considered only to the extent that they affect one or more qualifying relatives; in this case, the Applicant's mother. *See generally* 9 *USCIS Policy Manual*, *supra*, at B.4(D)(2) (referencing *Matter of Gonzalez Recinas*, 23 I&N Dec. at 471). Furthermore, the mere assertion of extreme hardship does not establish a credible claim. *See id.* at B.6(B). Rather, each assertion should be accompanied by evidence that substantively supports the claim absent a convincing explanation why the evidence is unavailable and could not reasonably be obtained. *See id.*

The Applicant references her mother's statement that she would not be able to care for her two children because of health issues and preexisting childcare obligations. However, the Applicant does not explain why she would need to leave the children in her mother's care, or whether her siblings in the United States might assist her. We also note that the information in the children's birth certificates indicates that their father, a Mexican national, is residing in the United States, and there is no evidence that he would be unwilling or unable to provide or arrange for the necessary care for the children if the Applicant is not in the United States. Thus, the evidence is currently insufficient to show if the Applicant's mother would in fact be responsible for raising the Applicant's children in her absence and, if so, whether this added responsibility would cause her hardship.

The Applicant further states that the Director erred by not giving significant weight to the fact that her mother has already experienced the devastation of losing a child when her younger sister was killed in Guatemala, and that her mother's emotional and physical well-being will likely deteriorate due to stress and fear if she is not permitted to remain in the United States. We recognize that the Applicant's sister died tragically while serving as a police officer in Guatemala, and that the worry about the Applicant's safety is causing her mother mental distress. We also acknowledge the travel advisory, online articles about violence towards women in Guatemala in general, and a letter from a local government official indicating that all of the communities in the municipality of [redacted] are prone to natural disasters and are exposed to violence. However, the Applicant has not explained whether she intends to reside in that particular area.[2] Furthermore, while adverse country conditions are relevant to determining whether an applicant has demonstrated extreme hardship to a qualifying relative, their presence in a particular case does not mean that extreme hardship would necessarily result from a denial of admission. *See generally* 9 *USCIS Policy Manual*, *supra*, at B.5(D)(2). We acknowledge that given the circumstances of the Applicant's sister's death and the widespread crime and violence in Guatemala the Applicant's mother would experience emotional hardship if the Applicant must return there. Nevertheless, the evidence remains insufficient to establish that this hardship will be extreme.

Similarly, the evidence is inadequate to support the claim of financial hardship to the Applicant's mother upon separation. Specifically, while the Applicant indicated that she helps her mother pay the rent, she has not explained her and her mother's living arrangements, and she has not provided documentation concerning her own income and the mother's financial obligations. Nor has she explained where her siblings live and if they would be able to assist the mother in her absence. We also note that the documents the Applicant submitted in support of her adjustment of status request reflect that her mother and stepfather jointly submitted an affidavit of support on her behalf, indicating that their household consisted of six persons, and USCIS determined that their income was adequate to support the Applicant in the United States. Consequently, it is unclear to what extent the Applicant's departure from the United States might affect her mother's economic situation.

The evidence is also insufficient to show that the Applicant's mother would suffer a health-related hardship upon separation from the Applicant. Although the mother's medical records indicate that she has been diagnosed with high cholesterol and hypothyroidism and is taking daily medications to manage these conditions, the Applicant has not provided evidence to show if and how the mother's ailments affect her daily life, and the extent to which she relies on the Applicant for health-related issues.

In conclusion, although we acknowledge that the Applicant and her mother have a close relationship and the mother will experience difficulties if separated from the Applicant, the totality of the evidence in the record remains insufficient to show that the mother's emotional, financial, and medical hardships considered individually and cumulatively would exceed those which are usual or expected if she remains in the United States and is separated from the Applicant. The Applicant must establish that denial of the waiver application will result in extreme hardship to a qualifying relative or relatives upon both separation and relocation. As she has not demonstrated such hardship in the event of

[2] The Applicant has not addressed whether her stepfather or her children's father, both of whom were born in Mexico, have any family ties in there, and whether it would be possible for her to reside in Mexico instead.

separation, we cannot conclude that the requisite extreme hardship would actually result from denial of her waiver application.[3]

Because the Applicant has not demonstrated extreme hardship to her qualifying relative if she is denied admission, we need not consider at this time whether she merits a waiver in the exercise of discretion, and reserve the issue. The waiver application will remain denied.

ORDER: The appeal is dismissed.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting 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).