U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26925825

Date: JUNE 1, 2023

Appeal of Nashville, Tennessee Field Office Decision

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

The Applicant, who has requested to adjust her status to that of a lawful permanent resident 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. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission will cause extreme hardship to a qualifying relative, or qualifying relatives.

The Director of the Nashville, Tennessee Field Office denied the Form I-601, concluding that the Applicant did not establish as required that her qualifying relatives will experience extreme hardship if she is denied admission, and that a waiver would not be otherwise warranted in the exercise of discretion. The matter is now before us on appeal.

The Applicant submits additional documents related to her daughter's medical condition, and asserts that the Director erred by looking at each claimed hardship individually instead of considering them in the aggregate, and by not giving any weight to her daughter'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 ground the noncitizen must demonstrate, as a threshold matter 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.

II. ANALYSIS

The Applicant does not contest that she is inadmissible to the United States for fraud or misrepresentation.[1] The issues on appeal are whether the Applicant has established extreme hardship to her qualifying relatives and, if so, whether she merits a waiver as a matter of discretion.

We have reviewed the entire record as supplemented on appeal, and conclude that it is still insufficient to show that the individual and cumulative hardships to the Applicant's lawful permanent spouse and parents would rise to the level of extreme as a result of her continued inadmissibility.

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 an applicant's evidence establishes 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 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 generally* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual. Here, the record does not contain a clear statement from either the Applicant's spouse or her parents indicating whether they intend to remain in the United States or relocate with her to their native China if the waiver application is denied. The Applicant must therefore establish that if she is denied admission, her spouse and/or parents would experience extreme hardship both upon separation and relocation.

The record reflects that the Applicant and her spouse have been married since 1989. They have two adult children – a son born in China in 1988, and a daughter who was born in the United States in 1996. The Applicant's parents, both 80 years old immigrated to the United States in 2019. In support of her waiver request the Applicant submitted a personal declaration and statements from her spouse, daughter, and parents. She stated that because her son is intellectually challenged he needs her assistance in all matters, and that she also drives her daughter to and from college because she is afraid that her daughter, who has been diagnosed with epilepsy might have a seizure. The Applicant

[1] The record reflects that in 1994 the Applicant sought admission to the United States with a fraudulently obtained passport and U.S. nonimmigrant visa, and that she subsequently applied for asylum misrepresenting her familial status, which was material to her claimed eligibility for asylum.

indicated that for those reasons she mainly takes care of the household while her spouse works to support the family and to pay for the daughter's medical expenses. The Applicant further stated that she periodically accompanies her elderly parents to their medical check-ups, and that they will face extreme hardships without her – their health will deteriorate, and they will not be able to enjoy their old-age lives. The Applicant's spouse confirmed in his statement that the Applicant assists their adult children and her parents, and that without her help he would not be able to work and support the family of six people. In their joint affidavit, the Applicant's parents indicated that the Applicant looks after them and her children, and that her spouse would not be able to go out to work and support the family if the Applicant were to return to China.

The Director acknowledged that under those circumstances the Applicant's spouse would likely experience hardship if he remained in the United States without her, but found the evidence insufficient to establish that this hardship would be extreme. Specifically, the Director noted that the Applicant did not provide documentation to support her claim that her spouse is currently suffering from mental and physical ailments, nor did she submit evidence to establish the extent of his financial hardship upon separation. The Director also noted that the Applicant's and her parents' statements about their health conditions and their reliance on the Applicant could not be given significant weight, because they were not corroborated by documentary evidence. Lastly, the Director determined that the claimed hardships to the Applicant's children did not have any weight, because the children were not qualifying relatives for the purposes of a waiver under section 212(i) of the Act.

The Applicant now submits an additional medical record for her daughter and a photograph of the medication she was prescribed. She 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 spouse and/or parents. *See generally* 9 *USCIS Policy Manual, supra,* at B.4(D)(2) (referencing *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002). 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. *Id.*

Here, while the daughter's medical documentation confirms the epilepsy diagnosis, it is not sufficient to show how this condition affects the daughter's daily life, and the extent to which she relies on the Applicant for assistance. Specifically, the daughter's medical records do not indicate the frequency or likelihood of seizures occurring, nor do they contain information about her ability to drive or perform other everyday tasks.[2] Thus, while we do not dispute the serious nature of the daughter's condition, the evidence related to her medical issues remains insufficient to determine how the Applicant's absence from the United States will impact her spouse.[3] Similarly, while we acknowledge the Applicant's claim that her adult son has a mental disability and relies on her for assistance, the Applicant has not provided any documentation to support her own and her immediate relatives' statements that her son is dependent on her in everyday life and "wherever he is, he needs the care of

[2] We note that the daughter indicated in her statement that she is currently a full-time college student, and plans to pursue a career in nursing.

[3] The Applicant does not claim that her parents assist her with caring for her daughter or son.

an adult." Those statements alone are not adequate to establish that the Applicant's spouse will experience extreme hardship related to the son's disability if the Applicant is not in the United States. Lastly, we note that although the Applicant indicated that she primarily takes care of the household and assists her parents and children, she represented on the adjustment application that she has been working as a cashier at the family's restaurant since 2013, and her 2014-2018 federal tax returns[4] reflect that she was employed as a restaurant worker in those years. Thus, it is not clear how much time the Applicant actually devotes to assisting her children and parents on a daily basis. Consequently, the Applicant has not demonstrated to what extent her spouse's ability to work and support the family will be affected if he must take over her responsibilities, and whether the resulting financial and other hardships to her spouse will be extreme.

Regarding the claimed hardship to the Applicant's parents, the Director observed that the Applicant did not provide any evidence related to their health conditions. The Applicant does not address this deficiency on appeal, and she does not submit evidence to show that her parents currently reside with her and her family.[5] Moreover, USCIS records reflect that the Applicant's U.S. citizen sibling petitioned for and sponsored the parents to immigrate to the United States. The Applicant does not explain whether her sibling could assist the parents if needed, or if she has any other relatives in the United States who might be willing and able to help her spouse manage work and family responsibilities in her absence.

In conclusion, although we acknowledge that the Applicant's spouse and parents will experience difficulties if separated from the Applicant, the totality of the evidence in the record remains insufficient to show that their medical and financial hardships considered individually and cumulatively would exceed those which are usual or expected if they remain in the United States and are 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 separation, we cannot conclude that the requisite extreme hardship would actually result from denial of her waiver application.

Because the Applicant has not demonstrated extreme hardship to her qualifying relatives if she is denied admission, we need not consider whether she merits a waiver in the exercise of discretion, and reserve the issue.[6] The waiver application will remain denied.

ORDER: The appeal is dismissed.

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[4] The Applicant did not provide tax documentation beyond 2018.

[5] We note that the Applicant's daughter indicated on the Form I-684, Affidavit of Support Under Section 213A of the INA, she filed on the Applicant's behalf, that the household consists of three persons.

[6] *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).