U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26320859

Date: June 26, 2023

Appeal of Oakland Park, Florida Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Haiti, seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). The Director of the Oakland Park, Florida Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (Form I-601), concluding that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation and had not established extreme hardship to a qualifying relative, her U.S. citizen spouse, as required to demonstrate eligibility for the discretionary waiver of that inadmissibility under section 212(i) of the Act. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant asserts her eligibility for the waiver based on extreme hardship on her spouse.

The Applicant bears the burden to establish eligibility for the requested benefit by a preponderance of the evidence. 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). 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.

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 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/policymanual (providing guidance on the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both these 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 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 contains clear statements from the Applicant and the Applicant's spouse indicating the Applicant's spouse intends to remain in the United States if the Applicant's waiver application is denied.

The Director denied the waiver application, finding the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act and stating that the Applicant had not met her burden of establishing that her spouse would suffer extreme hardship upon separation. The Director noted that the Applicant's spouse does not suffer from any medical conditions and that the Applicant's spouse's "psychological testing did not reveal any indications of mental illness except for anxiety disorder." The Director also found that the Applicant did not establish that her husband has high blood pressure and is treated for high blood pressure. While acknowledging that "areas of Haiti suffer from various levels or [sic] crime or poverty," the Director last found that the Applicant could find employment there or her husband could do the same should he choose to relocate there.

On appeal, the Applicant does not contest her inadmissibility, as described in the Director's decision. Instead, the Applicant submits a brief contending that she established eligibility for the waiver based on extreme hardship to her husband. The Applicant's brief states that the Director failed to consider all the hardship, entirely overlooking the Applicant's spouse's affidavit (which is not in the list of documents the Director reviewed), failing to properly weigh the country conditions in Haiti, and failing to aggregate the hardship including the psychological assessment of her spouse and the impact separation will have on his emotional and psychological well-being. The Applicant also states that the Director overlooked evidence in the record that the Applicant's husband was prescribed amlopidine, a blood pressure medication, after his hospitalization for chest pain. The Applicant also notes that, contrary to the Director's mention of her husband's ability to find employment in Haiti, her spouse's affidavit clearly expressed the Applicant's spouse's intention is to remain in the United States and his anxiety regarding separation.

Upon de novo review, we agree with the Applicant's appellate arguments that the Director's decision does not reflect consideration of the Applicant's husband's affidavit, did not sufficiently analyze the level and scale of adverse conditions in Haiti ranging from economic hardship to violence and personal safety concerns, and that the Director failed to aggregate all the relevant hardship factors. See 9 USCIS Policy Manual, supra, at B.5.

The record reflects that the Applicant and her husband married in 2018. The Applicant has four U.S. citizen adult children and nine grandchildren. Her spouse has lived in the United States since 1980 and also has extensive familial ties in the United States, including his own six U.S. citizen adult children, five grandchildren, and he describes his family as "a big, close-knit family." The Applicant's spouse states that "[a]ll of [his] close family who were there in Haiti have since passed away including my parents, aunts and uncles," and he has not been back to Haiti since 2008. The Applicant and her spouse currently reside with one of the Applicant's daughters, her husband, and three grandchildren in a house owned by that daughter.

The Applicant's husband is now 70 years old and states that he is employed by a boat painting and maintenance company where he has worked for 14 years. He has high blood pressure that is controlled with medication, and he has an anxiety disorder. He claims emotional and psychological hardship if he is separated from his wife. The Director's decision indicated that there was no evidence of the Applicant's husband suffering from any mental health disorders "except anxiety." However, the psychological evaluation in the record before the Director supports the Applicant's husband's claims of emotional and psychological hardship, documenting a diagnosis of "clinical anxiety disorder which is both long-standing and severe," and providing that he is "extremely emotionally and psychologically dependent on his wife" and that he does not have the "psychological and emotional stability to handle th[e] stress" of her potential removal.

In his statement, the Applicant's spouse indicated that he would not return to Haiti because of the dangerous and violent country conditions noting that the U.S. Department of State (DOS) has issued the highest warning (Level 4) against U.S. citizen's visiting Haiti due to kidnapping, crime, and civil unrest. Country conditions documentation submitted by the Applicant provide that: "Violent crime such as armed robbery and carjacking, is common. Travelers are sometimes followed and violently attacked shortly after leaving the Port-au-Prince international airport." The Applicant argues, and this evidence supports, that it would not be feasible for the Applicant's spouse to visit his wife in Haiti due to the DOS Level 4 travel warning. Furthermore, the Applicant's spouse states that his concern for his wife's safety in light of the dangerous country conditions in Haiti would exacerbate his anxiety disorder. This is again corroborated by the psychological evaluation of the Applicant's spouse, wherein the psychologist provides that his anxiety would be further exacerbated by "concern for his wife's wellbeing were she to" return to Haiti.

In addition, we note other relevant hardship factors: the Applicant's spouse has been in the United States for over 41 years, he is a naturalized U.S. citizen, and the Applicant is additionally a holder of Temporary Protected Status (TPS) for Haitians, a relevant hardship factor.

Upon de novo review, the overall record evidence establishes that the hardship considerations presented in the record, including the Applicant's spouse's medical, emotional, and psychological hardship, as well documentation concerning country conditions in as well as TPS-designation for Haiti, cumulatively go beyond the usual and expected results of separation if the waiver is denied. Accordingly, we will withdraw the Director's conclusion to the contrary and return the matter for the Director to determine whether the Applicant's waiver request warrants a favorable exercise of discretion.

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