U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27258834

Date: JUNE 26, 2023

Appeal of Hartford, Connecticut Field Office Decision

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

The Applicant has applied to adjust status to that of a lawful permanent resident 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 committing fraud when obtaining a nonimmigrant visa. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Hartford, Connecticut Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that refusal of admission would result in extreme hardship to the Applicant's only qualifying relative, his U.S. citizen spouse. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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, 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 does not contain a clear statement from the Applicant's spouse indicating whether she intends to remain in the United States or relocate to Peru if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

If the noncitizen demonstrates the requisite extreme hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. Matter of Mendez-Moralez, 21 I&N 296, 299 (BIA 1996). We must balance the adverse factors evidencing an applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. Id. at 300 (citations omitted).

Finally, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality." Matter of Chawathe, 25 I&N Dec. at 376. That decision explains that, pursuant to the preponderance of the evidence standard, we "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." Id.

II. ANALYSIS

The Applicant does not contest the finding of inadmissibility for misrepresentation of material facts, which is established in the record. The relevant issue on appeal is whether the Applicant has established extreme hardship to his spouse, as required to qualify for a waiver of inadmissibility under section 212(i) of the Act and, if so, whether he merits the waiver as a matter of discretion.

In support of his waiver request, the Applicant submitted his own and his spouse's February 2020 statements describing medical, emotional, psychological, and financial hardship the Applicant's spouse would suffer upon relocation to Peru and other documentation of hardship. The Applicant's

spouse's 2020 statement describes the extent of her dependence on the Applicant who she states, "is the primary caretaker of our family in every way." The Applicant's spouse's February 2020 statement expresses a clear intention to relocate, saying that the Applicant's wife and her children "would be obliged to follow" the Applicant to Peru. In a February 2020 letter from the Applicant's wife's doctor, an Assistant Professor of Clinical Medicine in Rheumatology at the [redacted] University School of Medicine, the doctor stated that the Applicant's wife "follows management for fibromyalgia and possible undifferentiated connective tissue disease." (Emphasis added). The doctor described the medication regimen and said, "we plan to slowly taper and stop [medication] in the future."

The Director denied the application, concluding that the Applicant did not submit sufficient evidence to establish that his spouse would suffer extreme hardship. The Director noted that the February 2020 doctor's letter stated the Applicant's wife would be weaned off medication. The Director also noted that, although the Applicant stated his spouse suffers from lupus, the doctor's letter stated she suffers from fibromyalgia, not lupus. The Director stated that neither the Applicant's spouse nor the medical doctor state how often the spouse is ill to the point of immobility and inability to take care of the children. And, the record did not establish how much time the Applicant spent taking care of the step-children and how the Applicant's departure would cause extreme hardship.

On appeal, the Applicant provides an updated statement from the Applicant's wife, a September 2021 updated letter from her same doctor, and documentation from the Mayo Clinic website describing fibromyalgia. The updated doctor's letter notes that the Applicant's wife has been under the doctor's care since November 2019 and states:

> She is currently being treated for fibromyalgia and undifferentiated connective tissue disease her condition causes generalized body pain along with swelling at the joints, worsen [sic] with activity and also prolonged standing. Her current medications include hydroxychloroquine 200 mg and vitamin b12.

The letter indicates that, in the period between February 2020 and September 2021, the doctor definitively diagnosed the Applicant's wife with a second illness in addition to fibromyalgia, i.e. undifferentiated connective tissue disease. Furthermore, the Applicant's wife has not stopped her medication as contemplated in the first doctor's letter. The doctor further confirms the specific effects of the condition on the Applicant's spouse, stating that she deals with generalized pain and swelling that worsen with activity.

In an updated September 2021 statement of the Applicant's wife, she states has been diagnosed with fibromyalgia and "undifferentiated connective tissue disease (systemic lupus)."[1] The Applicant's wife's September 2021 statement further provides:

[1] The Director's decision noted that the Applicant's statement called his wife's condition "lupus," but that the record did not support the Applicant's characterization of his wife's illness. It stated: "You have not provided any medical documentation demonstrating this medical condition [lupus], therefore USCIS can only assess the medical documentation provided by the medical doctor treating [the Applicant's wife]." The updated letter from the Applicant's spouse's medical doctor submitted on appeal provides that the Applicant has been diagnosed with both fibromyalgia and undifferentiated connective tissue disease.

> There's [sic] times where I'm not able to get up from bed and have to stay home and not able to work which I depend on my husband to take care of me and my children. He takes the full role of taking care of the house routines, [k]ids school routine, and caring of me by helping get dress [sic], helps me to walk, and my daily routines as is hard for me to perform. My disease currently has no cure and hoping one day we are able to find one but until then I depend if my medications [sic], doctor care and my husband's care which is why very important for him to be here with me as he is the only one I have to take care of me and my children.

In the updated letter, the Applicant's wife has changed her intention to relocate, stating that if her husband is denied admission to the United States then she will suffer separation. She also states that there are times she cannot work due to her medical conditions and that she is worried about financial hardship if her husband is removed. The Applicant's wife's description of her pain and dependence on her husband is consistent with documentation in the record describing the disease, including the 2021 medical letter.

The record on appeal includes additional evidence material to the issues that informed the Director's denial. Accordingly, we will return the matter to the Director to consider the new claims and evidence of extreme hardship in the first instance and to redetermine whether the Applicant has established eligibility for a waiver of her inadmissibility and warrants the waiver in the exercise of discretion.

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