U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24170146

Date: MAR. 10, 2023

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of South Korea, has applied to adjust status to that of a lawful permanent resident (LPR) and 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 Los Angeles, California Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's qualifying relative, his U.S. citizen mother, would experience extreme hardship if he were denied the waiver.

The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and contends that his mother would experience extreme hardship if his waiver were denied. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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. This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident (LPR) spouse or parent of the noncitizen. 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).

II. ANALYSIS

The Applicant has been found inadmissible for fraud or willful misrepresentation, specifically for making a material misrepresentation in order to obtain and maintain F-1 nonimmigrant student status in the United States, as described in the Director's decision. The Applicant does not contest, and the record supports, the Director's determination of the Applicant's inadmissibility.[1] The issue on appeal is whether the Applicant has demonstrated his U.S. citizen mother, his sole qualifying relative, would experience extreme hardship upon denial of the waiver.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case his U.S. citizen mother. Section 212(i) of the Act. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relatives remain in the United States separated from the applicant and 2) if the qualifying relatives relocate overseas with the applicant. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (providing, as guidance, the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both of 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 a statement from the Applicant's mother indicating that she would suffer extreme hardship under both scenarios. However, the Applicant's mother does not clarify whether she intends to remain in the United States or relocate to South Korea if the Applicant's waiver application is denied. Therefore, the Applicant must establish that if he is denied admission, his qualifying relative would experience extreme hardship both upon separation and relocation.

With the waiver application, the Applicant submitted statements from himself, his qualifying relative mother, his brother, his mother's sister, and three of his mother's friends. He also submitted a psychological evaluation of his mother; copies of his mother's prescriptions; his mother's bank statements and other bills; a list of his family's monthly expenses; his mother's tax returns for 2018, 2019, and 2020; his mother's Form W-2 Wage and Tax Statement (Form W-2), Form 1099 Non-Employee Compensation (Form 1099), and Form 1099G Certain Government Payments (Form 1099G) all for 2020; a lease agreement for the Applicant and his mother's current address; a photo and information relating to his brother's medical condition; copies of his brother's prescriptions; a letter from his brother's doctor; and his brother's tax returns for 2018 and 2019.

[1] The record demonstrates that the Applicant obtained and maintained F-1 student nonimmigrant status in the United States by falsely asserting that he intended to attend, and actually attended, [redacted] Technology College and [redacted] College of Forensic Studies.

In denying the waiver application, the Director outlined and detailed all of the evidence submitted by the Applicant and determined that it was not sufficient to establish that his mother would experience hardship that rises to the level of "extreme," as required.

On appeal, the Applicant solely submits a brief from counsel[2] and asserts that the record contains ample evidence of the extreme hardship his qualifying relative mother would suffer if separated from the Applicant or relocated to South Korea following him. The Applicant contends that the Director misconstrued the facts and misapplied the law by looking at each hardship factor in isolation rather than as an aggregate. He contends that the Director's decision does not reflect a careful consideration of all hardship factors in conjunction with all relevant documents and that the Director failed to consider all the evidence submitted in totality of the circumstances and cumulative determination of hardship. Finally, the Applicant argues that the Director's failure to issue a request for evidence (RFE) if and when the evidence presented was not persuasive is an abuse of discretion.

As a preliminary matter, we acknowledge the Applicant's argument that the Director denied the waiver application without first issuing an RFE to afford the Applicant and his qualifying relative an opportunity to provide additional evidence in support of a showing of extreme hardship in either or both separation and relocation. However, neither the statute and regulations, nor relevant USCIS policy require the issuance of an RFE where eligibility was not established at the time of filing. *See* 8 C.F.R. § 103.2(b)(8)(ii) (stating that,"[i]f all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility . . . ."); *see also 1 USCIS Policy Manual, supra,* E.6(F), (providing guidance as to when and if to issue an RFE, but nowhere relieving the petitioner from the burden of providing initial evidence, as required under the regulations). Accordingly, the Director properly exercised discretion and denied the waiver application without first issuing an RFE. Further, although the Applicant asserts that he was not afforded an opportunity to submit additional evidence related to the extreme hardship he asserts his U.S. citizen mother would experience upon denial of the waiver, he does not submit any additional evidence in support of the hardship claim with this appeal.

Next, contrary to the Applicant's assertions on appeal, our review indicates that the Director properly considered all the relevant evidence of extreme hardship in the aggregate. In her statement before the Director, the Applicant's mother recalled previous hardships she experienced with two divorces, being in an abusive relationship, and moving to the United States as a single mother with two sons. She explained that the Applicant is her eldest son and has always provided support to her when she needed it. She stated that the Applicant "understands [her] mental pain well," lives with her, and has a strong sense of responsibility to take care of her. She explained that she was diagnosed with major depressive disorder and experiences symptoms of varying degrees intermittently, such as depression and anxiety, as a result of the crisis arising from the Applicant's immigration situation, which she maintains has caused the intensity and frequency of her symptoms to increase over the past year. She further explained that she is also having a difficult time with post-traumatic stress disorder (PTSD) related to her marriage and divorce, but her current symptoms are primarily related to her fear of the Applicant's potential deportation and their separation.

[2] We note that the brief contains several instances where it erroneously refers to the Applicant as the qualifying relative's daughter or husband, although he is her son.

In his statement before the Director, the Applicant generally asserted that his mother's psychological health is in a very dangerous state, which is why he needs to be by her side to help her find stability and lead a normal life. He indicated that he helps her take care of housework, meals, and company work so she does not have to worry about those things alone. He stated that his mother has gastroesophageal reflux, herniated discs (caused by a car accident), and depression, and asserted that her illnesses require constant management, regular diet, and medication, which he regularly monitors as he is the one his mother looks to for assistance. He discussed how his mother feels he is her main source of emotional support and is struggling with extreme anxiety that he may be deported and separated from her.

In a psychological evaluation of the Applicant's mother, the counselor diagnosed her with major depressive disorder, generalized anxiety disorder, and PTSD, and indicated that her psychological functioning has deteriorated due to the expectation of separation from her son and her symptoms could therefore worsen upon separation. The evaluation indicates the Applicant's mother reported that she relies on the Applicant who checks in on her every day, takes her to doctors' appointments, makes sure her medications are filled and taken, and helps her with household chores. The evaluation generally concludes that if the Applicant is separated from his mother, his mother will face an overwhelming stress based on her claims that she would struggle with physical limitations arising from her age and various medical conditions, would have to financially support the Applicant who will be living in another country with no income, and would worry about his well-being living in a country without familial support.

Although we are sympathetic to the family's circumstances, we conclude that if the Applicant's mother remains in the United States without the Applicant, the record is insufficient to show that her hardship upon separation would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We acknowledge the evidence of psychological hardship upon separation in the record, including evidence that the Applicant's mother has been diagnosed with the above psychological disorders, and also suffers from high cholesterol, reflux esophagitis, and a herniated disc in her back. We further note the Applicant's and his mother's assertions, as set forth in their statements and in the mother's psychological evaluation, that he assists in her daily care. However, the record, including the statements and evaluation, does not establish the severity or frequency of the mother's conditions and related symptoms, how long she has been suffering from these conditions and symptoms, and if she is managing them with treatment, nor does it otherwise show that her physical or mental health issues adversely affect or limit her ability to work or carry out other activities such that she requires the Applicant's assistance. Moreover, despite the mother's diagnoses and her claim that she relies on the Applicant for her daily care, the Applicant is listed as her dependent on her income tax returns for 2020, and the record reflects that she owns and appears to be successfully running her own business since at least 2018, reporting gross profits over $100,000 on her income tax returns for 2020.

In addition, the record does not indicate that other family members in the United States are unable or unwilling to assist the Applicant's mother, as needed. For instance, the record shows the Applicant's mother's sister lives in the same city and the Applicant's brother lives in the same home as his mother. In regard to the Applicant's brother, the Applicant stated their mother always worries about his health because he has diabetes and an unusual skin disease called "vitiligo," which substantially restricts his normal outside activities. However, the information about vitiligo, submitted by the Applicant,

specifically states that vitiligo is mainly a cosmetic condition that makes the skin more sensitive to sunlight causing burning rather than tanning, may cause some abnormalities in the retinas but not usually affect vision, and may make a person more likely to get other autoimmune diseases. The letter from the Applicant's brother's doctor states that he has diabetes mellitus, transaminitis, and obesity, which require diet, medication, and exercise to manage. However, despite his medical conditions, the record reflects he works as a shipping supervisor at a women's apparel company, he reported earnings over $50,000 on his income tax returns for 2019, and he claimed the Applicant as a dependent on his income tax returns for 2018 and 2019. Consequently, the record does not show that the Applicant's brother is unable to or incapable of caring for their mother in the Applicant's absence as a result of his medical conditions.

Even considering all of the evidence in its totality, the record remains insufficient to show that the Applicant's mother's claimed mental and physical hardships would be unique or atypical, rising to the level of extreme hardship, if she remains in the United States while the Applicant returns to live abroad due to his inadmissibility.

As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to his mother both upon separation and relocation to South Korea, where both she and her son were born and raised. As the Applicant has not established extreme hardship to his mother in the event of separation, we cannot conclude he has met this requirement. Because the Applicant has not demonstrated extreme hardship to a qualifying relative if he is denied admission, we need not consider whether he merits a waiver in the exercise of discretion. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.