U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24378600

Date: MAR. 16, 2023

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

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 fraud or willful misrepresentation.

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 U.S. citizen spouse, her only qualifying relative, would experience extreme hardship if the waiver was not granted. 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 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, 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 U. S. citizen or lawful permanent resident 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).

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 scenarios is not required if the applicant's evidence demonstrates 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 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 generally 9 USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual. In the present case, the record contains an affidavit from the Applicant's spouse in which he discusses the hardships that he would face in the event of both separation from the Applicant and relocation with her to China; he does not state a clear intent to either remain in the United States or to relocate. The Applicant must therefore establish that if she must depart the United States, her spouse would experience extreme hardship upon both separation and relocation.

Once the requisite extreme hardship is established, the noncitizen must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

II. ANALYSIS

The Applicant denies that she is inadmissible, stating that the misrepresentation in her visa application was not material. In the alternative, the Applicant asserts that her husband would experience extreme hardship if she were denied admission to the United States.

A. Inadmissibility

In adjudicating the adjustment application, the Director found the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act for committing a willful misrepresentation of material fact by falsely stating she was married in her 2016 nonimmigrant visa application and at her consular interview. On appeal, the Applicant contends she is not inadmissible because her misrepresentation was not material under section 212(a)(6)(C)(i) of the Act.

A false representation is considered material if it tends to cut off a line of inquiry that is relevant to the noncitizen's admissibility and that would have predictably disclosed other facts relevant to their eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-*, 27 I&N Dec. 105 (BIA 2017). The applicant has the burden to demonstrate that any line of inquiry shut off by the misrepresentation was irrelevant to the original eligibility determination. *See 8 USCIS Policy Manual, supra*, at J.3(E)(4). Additionally, to be issued a nonimmigrant visa to the United States, a foreign national must overcome the statutory presumption at 214(b) of the Act, 8 U.S.C. § 1184(b), that they are an intending immigrant. Therefore, in seeking nonimmigrant admission to the United States, a visa applicant must establish to the satisfaction of a consular officer that they have no intention of abandoning their foreign residence. *See 9 Foreign Affairs Manual* 401.1-3(E), https://fam.state.gov/FAM/09FAM040101.html. In doing so, an applicant must demonstrate, among other factors, close family ties in the country of origin.

Here, the Applicant's misrepresentation of her marital status was relevant to her admissibility as it shut off a line of inquiry into her nonimmigrant intent and was therefore material to her application for the visa. The Applicant has not satisfied his burden to establish that she is not inadmissible under section 212(a)(6)(e)(i) of the Act.

B. Extreme Hardship

The Director then denied the Applicant's waiver application, concluding that the Applicant had not established extreme hardship to her U.S. citizen spouse. The Applicant's brief does not point out any material errors in the Director's decision, but rather disagrees with the Director's weighing of the hardship in the established record. On appeal, the Applicant also submits additional documentation.

Regarding medical hardship, the Applicant's spouse states he suffers from diabetes and high blood pressure, which require regular medical appointments and medication, and the Applicant is his only caretaker. The Applicant's spouse also states that he suffers from "mild dementia" with memory loss. The record contains the following medical documentation: a referral for an MRI; a medical report from [redacted] Specialty Imaging Center titled "MRI Brain WO" dated September 8, 2022; two letters from [redacted], dated August 22, 2019, and January 13, 2021; a printout of the U.S. Embassy and Consulates in China Medical Assistance website; and a partial copy of the National Center for Health Statistics Fast Stats for diabetes. [redacted] indicates that the Applicant's spouse has been able to manage his diabetes and hypertension through medication and regular office visits. The documentation before us indicates the Applicant's spouse received an MRI; however, the record does not contain an evaluation, diagnosis, or explanation of the need for assistance. Although the record indicates the Applicant cares for her spouse, the record does not indicate the spouse suffers from a serious medical condition that requires ongoing assistance from the Applicant.

Concerning financial hardship, the Applicant's spouse states that without the Applicant, he would be unable to work, he would not meet his financial obligations, and would become a public charge. The Applicant's spouse has worked as an attorney since establishing his law firm in 1995. He is also currently employed part time as a consulting attorney for the Eghbali Firm. He asserts that the Applicant has contributed to his law firm by marketing on social media and providing customer service to Chinese clients. The record does not contain documentary evidence outlining the extent of the Applicant's work for her spouse's law firm or explain why her spouse could not hire an employee to provide similar support. The documentation submitted with the waiver and now on appeal does not outline the household income and expenses. As such, the record does not sufficiently establish the Applicant's spouse's current financial circumstances and does not contain sufficient evidence to support the assertion that the Applicant's relocation would threaten her spouse's ability to cover essential expenses.

Regarding emotional and psychological hardship, the Applicant's spouse states that he suffers from depression and experiences sleepless nights, anxiety and feelings of worthlessness and guilt. The Applicant submitted two comprehensive psychological evaluations for her spouse. The most recent psychological assessment by a licensed psychotherapist from October 2021, indicates that the Applicant's spouse suffers from Major Depressive Disorder and Post-Traumatic Stress Disorder. The

assessment states the Applicant's spouse has "an average percentage for recovery if he would follow through with counseling." The record does not contain any treatment plan for the spouse's diagnosis, ongoing sessions with a mental health professional, or sufficient evidence to indicate the spouse needs daily assistance due to his diagnosis. The evidence in the record does not sufficiently establish that the emotional effects of separation from the Applicant would be more serious than the type of hardship normally suffered when one is faced with the prospect of separation from one's spouse.

III. CONCLUSION

As the Applicant has not established extreme hardship to her U.S. citizen spouse in the event of separation, we cannot conclude she has met the requirement that denial of the waiver application would result in extreme hardship to her qualifying relative upon both separation and relocation. In addition, because the Applicant has not demonstrated extreme hardship to her qualifying relative if she is denied admission to the United States, we need not consider whether she merits a waiver in the exercise of discretion. The waiver application will remain denied.

ORDER: The appeal is dismissed.