U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29668141

Date: JAN. 4, 2024

Appeal of Tucson, Arizona Field Office Decision

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

The Applicant, a native and citizen of Mexico currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Tucson, Arizona Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant did not establish his U.S. citizen spouse, a qualifying relative, would experience extreme hardship upon his removal or their relocation to Mexico. 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.

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. There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or LPR spouse or parent of the noncitizen. If the foreign national demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. 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).

The Applicant first entered the United States in 1996 with a visitor's visa. His last entry, also with a visitor's visa, was in 2002. In 2021 he simultaneously filed a family-based adjustment application and waiver application. Testifying during his adjustment interview, he explained he intended to continue working and living in the United States when renewing the visitor's visa and entering the United States, contrary to what he indicated on the visa application and at entry. The Director denied the adjustment application determining the Applicant is inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act and denied the waiver application, concluding that he did not establish extreme hardship to his U.S. citizen spouse.[1]

In that decision, the Director reasoned that his spouse would experience hardship if the waiver application were denied, but that the hardship did not go beyond what is normally expected when confronted with separation or relocation. Regarding the spouse's psychological diagnosis, the Director acknowledged she suffers from depression and anxiety, but did not find evidence of treatments she receives in the United States or that the conditions would worsen if she were to relocate to Mexico. Although the couple's children are not qualifying relatives for hardship purposes, the Director considered the effect the Applicant's inadmissibility would have on his spouse as it relates to their children and concluded there was insufficient evidence to establish hardship to the spouse, given the age and health of the children. The Director also acknowledged the fact that the Applicant is the primary financial provider for the family, but determined the Applicant did not submit evidence detailing the family's financial situation such that he established his spouse would endure extreme financial hardship resulting from their separation. Finally, the Director concluded that although there are concerns with safety in certain areas of Mexico, there is no requirement that the Applicant's spouse reside with him in Mexico and thus relocation would not result in hardship to the Applicant's spouse.

The issue on appeal is whether the Applicant has established his wife would experience extreme hardship. The Applicant contends the Director erred in not considering the extent of the adverse psychological and financial impacts on his spouse.

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 Gonzalez 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.* Here,

[1] The Applicant does not contest the inadmissibility finding.

the Applicant's spouse did not specify if she would remain in the United States or relocate to Mexico, and thus the Applicant must establish extreme hardship to his spouse upon both relocation and separation. Upon de novo review, we analyze hardship to the Applicant's spouse upon separation and determine the Applicant has not established by a preponderance of the evidence that his spouse would endure extreme hardship if the waiver application were denied.

Regarding hardship, the record contains written statements from the Applicant's spouse and children, the spouse's psychological exam, country condition reports, and the Applicant's 2012 medical discharge record relating to a brain tumor. The record does not contain any updates on the tumor other than his spouse's reference in the psychological report that they could not afford surgery and that with prayer, the tumor resolved itself.

The information from the psychologist indicates the Applicant and his spouse have a close nurturing relationship and have never been apart for more than a day during their twenty-five-year marriage. The psychologist reports that the spouse is nervous, agitated, and distressed because of immigration concerns and that she lives in constant fear the Applicant will be deported. She was diagnosed with mild depression and anxiety, placing her in the moderate risk range which could worsen. The report, however, does not describe ongoing psychological treatment or any regular support the Applicant provides to his spouse. We recognize the emotional and psychological strain that separation from a loved one may cause and have considered the loving relationship between the Applicant and his spouse. Here, however, the Applicant has not established that his spouse would endure hardship exceeding that which is usual or expected upon separation.

Regarding the financial difficulties the Applicant's spouse will incur upon removal, the record contains insufficient information regarding current expenses or income. The Applicant explained he is the primary wage earner, and his spouse does not work outside of the family, but the Applicant did not provide a clear financial picture or demonstrate how his absence would affect the financial outlook for the family, particularly given the adult children may be contributing to the household. The psychological report indicates the spouse has worked as a respite caregiver since 2008, but the record lacks specificity as to the spouse's earnings from this employment. Although we recognize the loss of income from the Applicant would create some financial hardships, he has not established that his spouse would be unable to obtain gainful employment or otherwise support the family. We note that the inability to maintain one's present standard of living is a common result of removal and does not amount to exceptional and unusual hardship. *See Matter of Pilch*, 21 I&N Dec. 630-31.

Although the Applicant's counsel argues that the Applicant has young children, which would lead to more hardship to the spouse upon separation, we note the record reflects that the Applicant's children are 24, 20, and 18 years old respectively. All are U.S. citizens, and their statements indicate the Applicant is a devoted father. We do not doubt the Applicant's strong bonds with is family, but the loss of close family is an expected result of removal, and without more is not sufficient to establish extreme hardship. In the end, the Applicant has not established by a preponderance of evidence that his spouse's hardships considered individually and cumulatively, would rise to the level of extreme hardship upon separation. The waiver application will remain denied.

ORDER: The appeal is dismissed.