U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19349670

Date: FEB. 17, 2022

Appeal of Dallas, Texas, Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico, has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II). Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides for a waiver of this inadmissibility if denial of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen.

The Director of the Dallas, Texas, Field Office denied the application, concluding that the record established that the Applicant was inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence in the United States for one year or more and seeking admission within 10 years of the Applicant's departure or removal. The Director further concluded that the record did not establish, as required, that denial of admission would result in extreme hardship to the Applicant's qualifying relative, her lawful permanent resident spouse. On appeal, the Applicant asserts that her qualifying relative spouse would experience extreme hardship in the event that the Applicant is not granted a waiver of inadmissibility.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

A noncitizen who has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of the noncitizen's departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i)(II) of the Act. There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to a U.S. 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 that U.S. Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver. *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).

II. ANALYSIS

The Applicant does not contest the finding of inadmissibility for unlawful presence, a determination supported by the record. The issue on appeal is whether the Applicant's qualifying relative would experience extreme hardship if the waiver is denied. 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, 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)). An 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 waiver is denied. *See id.*

In support of the application, the Applicant submitted a three-page statement from her spouse. The Applicant's spouse specifically states, "I cannot abandon my job and sacrifice our children's lives to move to Mexico with [the Applicant]" and he addresses "life without [the Applicant]." On appeal, the Applicant references both scenarios of her "remain[ing] in Mexico without him and if he were forced to move to Mexico to be with her." However, the Applicant does not submit another statement from her spouse that specifically states he would relocate abroad. Accordingly, we limit our analysis to whether the Applicant's spouse would experience extreme hardship upon separation.

The Applicant's spouse addresses financial, emotional, and medical hardship. He asserts that the family has "young ones living at home who rely on [the Applicant] for basic needs and attention [and the Applicant] is the one who spends most of the time with this kids [*sic*] because I work and sometimes I work long hours." The Applicant's spouse also asserts that if the Applicant were removed, "I will have to cut back on my hours and possibly lose my job to be able to care for the younger kids." Although the record establishes that, at the time of filing, the Applicant's two youngest children were 17 and 12 years of age, we note that only one of the Applicant's children is a minor at this time.[1] The Applicant's spouse also asserts that "the thought of [the Applicant] being in Mexico has given me worry and anxiety due to the violence and the lack of the things we take for granted in the US." The Applicant's spouse further asserts that "[t]here are a lot of things that she does and takes

[1] The Applicant has three adult children and one minor child.

care of [in their household] that I have no idea how to do. I do not even pay our monthly bills because [the Applicant takes care of all of that." He also indicates that he has hypertension.

Also in support of the application, the Applicant submitted two brief statements from a professional counselor, dated January and February 2021, providing opinions about the Applicant's spouse. The first statement consists of five sentences, noting that the Applicant's spouse "thinks and worries a great deal over what would happen to him and his family if his wife were to have to return to Mexico for an extended period of time." The counselor recommended that the Applicant's spouse should "continue his counseling over how to manage a potential separation" and "maintain contact with his physician around his high blood pressure." The counselor also recommended that the Applicant should "complete her immigration as soon as possible." The second, two-page statement from the counselor noted that the Applicant's spouse "scored as having 'No' depression," "scored as having 'Moderate' anxiety," and diagnosed him with generalized anxiety disorder. The record also contains a one-page statement from a doctor of family medicine, noting that the doctor treated the Applicant's spouse "for his blood pressure" in November 2020, adding, "Restrictions: None," without elaborating on whether the Applicant's spouse requires any medication or other treatment for his blood pressure.

The Director concluded that "having dual households during a separation is a hardship all families face when living apart and does not rise to the level of extreme hardship." The Director observed that "the evidence appears to indicate that [the Applicant's] husband is able to pay all of the submitted household expenses with his present income" and that the record "did not establish that [the Applicant] would be unable to contribute to [her] support or that [her] husband would be unable to make adjustments as necessary to accommodate the new situation." The Director further concluded that "the evidence provided is insufficient to establish [the Applicant's] husband's emotional suffering rises above the level normally associated with separation from a loved one determined to be inadmissible."

On appeal, the Applicant first asserts that the Director improperly "adjudicat[ed] the waiver as if the standard of proof were an extreme and unusual hardship level." The Applicant asserts that, instead, the proper standard is extreme hardship, as articulated in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 560. The Applicant's assertions are misplaced. The standard of proving eligibility for a waiver is a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010); *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether a noncitizen has established extreme hardship to a qualifying relative upon relocation for purposes of the waiver under section 212(i) of the Act. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

Here, the Director specifically detailed the *Matter of Cervantes-Gonzalez* factors in his decision. He determined that the Applicant did not establish by a preponderance of the evidence that denial of the waiver would result in extreme hardship to her qualifying relative. Moreover, the Applicant does not identify on appeal any particular language in the decision wherein the Director concluded the record did not establish extreme *and unusual* hardship to a qualifying relative. Accordingly, the Director applied the proper standard.

Next, the Applicant addresses the hardships that the Applicant's spouse would experience if, at the age of 50 and with 18 years of employment with the same employer, he would have to relocate to Mexico and find new employment. However, as discussed above, the Applicant's spouse specifically stated that he would not relocate or seek new employment. Because these assertions on appeal from the Applicant conflict with her qualifying relative's specific statements, we need not further consider any potential hardship upon his relocation.

The Applicant next asserts on appeal that the Director "offer[ed] no professional evaluation, or study, or medical theory to counter the conclusions held by [the professional counselor's statements]." Relatedly, the Applicant asserts that the duration of her 30-year relationship with her spouse will heighten the hardship he would experience upon separation. However, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. The record does not establish how the Applicant's spouse's generalized anxiety disorder, as a result of the Applicant's inadmissibility, rises above the common results of removal, in order to constitute extreme emotional hardship. *See Matter of Pilch*, 21 I&N Dec. at 630-31. Relatedly, the Applicant submits on appeal a four-sentence statement from a medical doctor, indicating that the Applicant's spouse "is undergoing titration of medication therapy and lifestyle changes to improve control of . . . uncontrolled hypertension and anxiety," with monthly follow-up appointments. However, the statement does not elaborate on how the Applicant's spouse's hypertension and anxiety rises above the common results of removal in order to constitute extreme emotional or extreme medical hardship. *See id.*

The Applicant also asserts on appeal that her spouse "must remain in the US to continue raising the 2 US-born minors and to be able to continue to earn a living. However, his wages and possibly his employment will be affected because he will not be able to continue with his regular hours of work since the minors are still in school and require parental attention." The Applicant further asserts that her spouse will suffer financial hardship because "the reality is that [he] will have to support [the Applicant] during the time she is unemployed in addition to supporting the family in the US." As noted above, only one of the Applicant's children at this time is under the age of 18—that child is 13 years of age. The record does not elaborate on how the Applicant's one adolescent child requires an amount of parental attention that cannot be met by the Applicant's spouse or his three adult children in the absence of the Applicant. The record also does not explain how the need for the Applicant to find employment upon removal and for the Applicant's spouse to support her financially while she is unemployed is uncommon in removal situations. In summation, the record does not establish that the particular family separation and financial situation rises above the common results of removal, in order to constitute either extreme financial or extreme emotional hardship. *See id.*

The Applicant next asserts on appeal that her spouse "will also have to deal with the suffering and mental anguish that will be suffered by the children at being separated by [*sic*] a mother who has always been there for them." Again, we note that three of the Applicant's children are adults at this

time. We also note that the record does not establish why the Applicant cannot maintain regular contact with her spouse and children through common modes of communication like phone calls and email and text messages. In total, the record does not establish how this family separation situation rises above the common results of removal, in order to constitute extreme emotional hardship. *See id.*

The Applicant also asserts on appeal that travel for the family to visit the Applicant will be limited. The Applicant compares her family's income level to families with higher income levels, and references travel restrictions in connection with the ongoing COVID-19 pandemic. However, the record does not establish how the need for the Applicant's family to travel to visit her in person upon her removal is unusual. Accordingly, the record does not establish how this family separation situation rises above the common results of removal, in order to constitute either extreme financial or extreme emotional hardship. *See id.*

Although we address each specific hardship factor identified on appeal separately, we have considered the issues in the aggregate, *Matter of Ige*, 20 I&N Dec. at 882, but find that they do not rise above the common results of removal. In summation, considering the record in its entirety, the Applicant has not established by a preponderance of the evidence that denial of the waiver would result in extreme hardship to her qualifying relative upon separation.

Because the record does not establish the Applicant's qualifying relative would experience extreme hardship upon separation, we need not address whether she warrants favorable discretion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.