U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22585536

Date: Nov. 15, 2022

Appeal of Los Angeles County, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for a material misrepresentation and for unlawful presence.

Any foreign national 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. A foreign national 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 departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i)(II) of the Act. There is a waiver of these grounds of inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national. Sections 212(i) and 212(a)(9)(B)(v) of the Act.

The Director of the Los Angeles County, California Field Office denied the waiver application, concluding that the Applicant did not establish that her qualifying relative, her lawful permanent resident spouse, would experience extreme hardship if her waiver was not granted.[1]

On appeal, the Applicant does not contest her inadmissibility findings, but asserts that the Director erred in denying the application. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will remand the matter for the entry of a new decision consistent with our analysis below.

The Applicant must demonstrate that the refusal of her admission would result in extreme hardship to her lawful permanent resident 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. Demonstrating extreme hardship under both of these

[1] The Applicant concurrently filed Form I-212, Application for Permission to Reapply for Admission, with the waiver application. The Applicant, a native and citizen of Mexico, will become inadmissible upon departing the United States pursuant to section 212(a)(9)(A)(ii) of the Act for having been previously ordered removed. The Director denied the Applicant's Form I-212 application as a matter of discretion.

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. 9 *USCIS Policy Manual* B 4(B), https://www.uscis.gov/policymanual. The Applicant's spouse has submitted statements indicating that he, along with couple's youngest child [G-] (who is now 17 years old), would relocate to Mexico with the Applicant if her application is denied. The Applicant must therefore establish that if she is denied admission, her qualifying relative would experience extreme hardship upon relocation.

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). If the foreign national demonstrates the existence of the required extreme hardship, then they must also show that U.S. Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

The Director found that the record did not establish hardship rising to the level of extreme hardship because the evidence of emotional, financial, and medical hardship to the Applicant's spouse did not show hardship above and beyond what would normally be expected upon relocation. On appeal, the Applicant asserts that the Director erred in analyzing the hardship in her case by disregarding evidence of hardship to non-qualifying persons as it relates to the qualifying spouse's hardships, and other hardships that her spouse would endure upon relocation.

The Applicant (now age 52) provided background information regarding her immigration history and her relationship with her spouse (now age 53), as follows:

> [My spouse] is from the same town in Mexico. We first met when we were only 12 or 13 years old. [In 1990] we married in Mexico, [t]hen we celebrated our marriage again [in 1999] in the United States. We have never been separated from each other and have lived together since [1990]. In total, we have 5 children together, all of whom live [and were born] in the United States. Besides [G-], my children are adults, and though they have their own families, we maintain an exceptionally close relationship and visit each other frequently. I also have grandchildren, who live in the United States, whom I adore and spend time with. During my entire life, [I] have cared for my family at home. . . . [My spouse] has always provided for our household, through his jobs as a window cleaner and [in] construction, despite his ulcerative colitis.
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> I came to the United States on or about November 1990, [then departed] to Mexico [in] July 1996. [In] [redacted] 1996, I attempted to reenter the United States unlawfully, [and] was apprehended by immigration officials at the border after I provided a false

> name and date of birth. I also had in my possession a lawful permanent resident card that did not belong to me. . . . I was placed in exclusion proceedings [and an] Immigration Judge ordered me [excluded] from the United States. After I was excluded from the United States, [I] subsequently reentered without inspection [about ten days later]. I have not left the United States and have resided [here] continuously since [September 1996] with my family.

The Applicant's spouse submitted a statement with the application in which he described the close, long-term bond he has with the Applicant, and his positive relationships with his adult children and grandchildren who all live in the United States. Both the Applicant and her spouse are adamant that G-, their minor child will relocate with them to Mexico, and they describe his struggles in school and the role that the Applicant has played by working with school officials to help improve his performance. The spouse indicates that he is very worried about how his younger son will adjust to living in Mexico. He describes other emotional hardships that he will experience upon relocation, indicating:

> I will suffer immeasurable emotional pain if I had to leave our other children and grandchildren behind, while we cope with life in Mexico. . . . Given that I have been in [the Applicant's] life since our early teenage years, we share a unique and loving bond. I cannot imagine being separated from her for an extended period of time. Without her presence in the United States, I would be unable to emotionally cope with life and her separation from our children. For this reason, I feel I would have no choice but to relocate with [her] to Mexico and take our son [G-] with us.

The spouse references letters from the couple's adult children provided in support of the application emphasizing that they describe her "as a loving and caring mother and grandmother and [explain] how they would be emotionally impacted if [she] must leave the United States." He asserts that "their emotional trauma would be equally felt by me as I would be tormented to know that they would be separated from their mother and I."

The Director denied the application in part, concluding that the refusal of the Applicant's admission must result in extreme hardship to her qualifying relative spouse, maintaining that any hardship that the Applicant's departure from the United States may cause her or other family members *cannot be considered*. The Director later indicated that she had taken into consideration the potential impacts on the Applicant's family members if she were removed from the United States *and their connection to the spouse's hardships*. For instance, the Director discussed evidence regarding the couple's son who was treated for alcoholism at an emergency room in 2016, noting that the record did not show that he is currently undergoing treatment for alcoholism, or that he relies on the spouse for rehabilitation. However, she did not sufficiently analyze other evidence that the Applicant provided to establish the hardships that her spouse will experience based upon her hardships and the hardships of his children and grandchildren should the couple relocate to Mexico with their youngest son, such as the letters from the couple's other adult children and family friends.

In addition, the Director appears to not fully consider important hardship factors such as the length of the spouse's marriage to the Applicant; his 32 years of employment while a lawful permanent resident in the United States, and the loss of his extensive family and community ties here. Therefore, we

conclude that the Director did not properly weigh the hardship factors surrounding the spouse's hardships upon relocation.

The Director also seems to improperly weigh the evidence provided about the spouse's concerns for the safety and welfare of the couple and G- upon relocation. She observed that the record did not reflect that the potential safety risks in Mexico would be significantly higher than the safety risks present in the city in which the couple and G- reside in the United States. She determined as a result of this comparison that this potential hardship to the spouse upon relocation with the Applicant would not reach the level of extreme. Here, the Director did not adequately explain why her comparison of the potential risk factors of living in Mexico relative to the risk factors which may (or may not be) present where the Applicant and her family live in the United States is relevant to the case at hand. Further, she did not otherwise discuss other evidence presented about the spouse's concerns for the family's safety and welfare upon relocation, which he indicated are issues that cause him emotional worry and distress.

Lastly, it also appears that the Director erred in the method of analysis because each hardship factor (emotional, financial, and medical) was individually dismissed as not reaching the extreme hardship standard and these difficulties do not appear to have been considered in the aggregate. 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).

On appeal, the Applicant submits new evidence regarding the spouse's ability to find gainful employment upon relocation to Mexico given his skill set and advancing age, as well as safety and welfare factors upon relocation that may impact the couple and G- who will be residing with them in Mexico. Additionally, the Applicant presents new evidence of G-'s severe allergies and his current immunotherapy treatment program which requires ongoing injections administered by medical personnel which may be unavailable to him in Mexico, which causes the spouse worry and anxiety. The Applicant also submits a new statement from the spouse who further explains and expounds upon the hardships that he will experience upon relocation.

For the foregoing reasons, we will withdraw the Director's decision and remand the matter back to the Director to consider this evidence in the first instance, along with the other evidence in the record within a new hardship analysis and, if necessary, a discretionary determination, making sure to include any extreme hardship finding as a significant positive discretionary factor. The Director may request any additional evidence considered pertinent to the new determination and any other issues. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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