U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25432506

Date: APR. 05, 2023

Seattle, Washington 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) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on her immigrant classification under the Violence Against Women Act (VAWA), codified at section 204(a)(1)(A)(vii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(vii). 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 unlawful presence under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I) and seeks a waiver of that inadmissibility pursuant to section 212(a)(9)(C)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(iii).

The Director of the Seattle, Washington Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), finding the Applicant had not established her departure or reentry into the United States was connected to her battering or subjection to extreme cruelty, pursuant to section 212(a)(9)(C)(i)(iii) of the Act. The Applicant filed a motion to reopen and to reconsider with the Director. The Director reviewed the Applicant's additional submissions on motion and denied the motion. The matter is now before us on appeal.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Any noncitizen who has been unlawfully present in the United States for an aggregate period of more than one year, and who enters or attempts to reenter the United States without being admitted is inadmissible. Section 212(a)(9)(C)(i)(I) of the Act. However, this inadmissibility may be waived in the case of a VAWA self-petitioner if there is a connection between their battering or subjection to

extreme cruelty and their departure, reentry, reentries, or attempted reentry into the United States. Section 212(a)(9)(C)(iii) of the Act.

II. ANALYSIS

A. Relevant Background and Procedural History

In August 2018, the Applicant filed a VAWA petition, Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application) and the instant waiver application. In an affidavit submitted with the VAWA petition, the Applicant detailed the abuse she endured by her U.S. citizen child, O-A-,[1] born in 1995. She described her son as unstable, unpredictable, explosive, manipulative, aggressive, and destructive. She said she fears him because he may kill her and explained that he physically attacks her, threatens and intimidates her younger children, throws things such as chairs, furniture, decorations in the house, destroys things such as doors, beds, a dryer and their piano, has stolen over ten thousand dollars from her, repeatedly threatens to call immigration on her, is verbally abusive, insulting her and telling her she deserves the way he treats her. While the Applicant did not specify dates or at what age he began exhibiting this behavior, she said her problems with O-A- started when he was 13 years old. She said she decided to return to Mexico in 2008 hoping that changing his environment would benefit him. However, he was bullied while in Mexico and his behavior became worse. She contributes this as one of the factors for why she and her children returned to the United States.[2] Among the supporting documents for the VAWA petition was a school document evidencing O-A-'s expulsion from school in 2009. Also provided was a petition, filed in 2011 with the Superior Court of Washington by the Applicant and her husband, seeking Court intervention to maintain care and custody of O-A-. The Court petition described, among other things, the jail time O-A- had served for robbery with intimidation, his abuse of alcohol and drugs, his involvement with gangs, his truancy, his carrying of a knife, and his verbally and physically abusive behavior. Also included with the VAWA petition was a petition for an order of protection dated 2018 and filed by X-R-, the mother of O-A-'s children. Within the petition for a protective order, X-R- describes O-A-'s repeated physical abuse, including him beating her while she was pregnant and while she was holding their newborn child. X-R- claims O-A- physically and verbally abused and stole from her over the preceding eight years. Although filed in 2011 and 2018 respectively, the documents evidenced O-A-'s abusive and violent behavior did not begin in 2011 but had been ongoing for some time prior.

The Applicant was interviewed by U.S. Citizenship and Immigration Services (USCIS) in September 2021. After the interview, the Director issued a request for evidence (RFE) summarizing the Applicant's testimony, in relevant part, as follows: she first entered the United States on or about 1993 without being inspected, admitted, or paroled. Her son started to "become rebellious" and she thought it "healthier" to return to Mexico. She travelled with her seven U.S. citizen children to Mexico in February 2008, enrolled O-A- in school, but O-A- began associating with the "wrong people" and was teased and she decided to return with her family to the United States. In May 2008, she attempted to reenter the United States but was returned to Mexico by U.S. border officials. She reentered a week later without being inspected, admitted, or paroled into the United States. The Director determined

[1] Initials are used to protect the privacy of the individuals.

[2] The Applicant does not claim that the only reason for returning to the United States was on account of her son's abusive behavior but states it was among the factors, which also included her other children's asthma issues, financial burdens, their inability to sell their house in the United States, and the dangerous conditions in Mexico.

that the Applicant was inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act because she was unlawfully present in the United States for an aggregate period of more than one year, departed, and reentered the United States in 2008 without being admitted.[3] The Director did not raise credibility issues with the Applicant's testimony in the RFE, but explained that the Applicant may be eligible for a waiver if she provides evidence establishing a connection between the abuse she suffered and her departure and reentry to the United States, as the earliest evidence of O-A-'s abusive behavior was from 2011, a few years after her return to the United States.

In response to the RFE, the Applicant included a supplemental declaration adding the following details: O-A- "was very young when his abusive behavior began." During the 2004-2005 school year, he was suspended multiple times for constant fighting, bullying of other children, cursing, lying, and being defiant. He was also expelled that school year. He began accruing a juvenile criminal record in 2006. The Applicant believed O-A-'s friends, some of whom were now dead, were influencing his behavior, so she thought moving to Mexico would bring change. When in Mexico, however, O-A-'s response to being bullied by the other children was to fight. He blamed the Applicant for being bullied, insulted her and was always angry with her. Because his behavior was worsening, the Applicant and her husband decided the family should return to the United States. The Applicant included a letter by the director of pupil management stating O-A- exhibited behavioral problems and truancy during school years 2004-2006, a letter by the then-school registrar describing the attendance and discipline meetings she attended as translator with O-A-'s parents in 2008, school records indicating O-A- was transferred out of school in February 2008, he was expelled in May 2009, and was exhibiting distracting behavior in February 2008. The Applicant also provided a Mexican tourist visa for O-A- stamped February 2008 and documentation from the education department in Mexico validating O-A-'s level of education, to demonstrate that her intent in going to Mexico was to enroll him in school and have him spend time there.

The Director approved the VAWA petition. However, the Director denied the adjustment and waiver applications. The Director determined that the record indicated that the Applicant took a trip to Mexico with her children that was not connected to the abuse or extreme cruelty she suffered from her son, who was only then 12 years old. As a result, the Director found that the Applicant had not demonstrated a connection between her battering or subjection to extreme cruelty and her departure, reentry, reentries, or attempted reentry into the United States as required for a waiver under section 212(a)(9)(C)(iii) of the Act.[4] The Director explained that the Applicant had not met her burden as she did not provide documentation that she enrolled her son in school while in Mexico, or intended to remain in Mexico, or attempted to sell her home, nor did she provide a reasonable explanation for why she believed moving to Mexico would benefit her son.

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[3] The Applicant does not contest her inadmissibility under Section 212(a)(9)(C)(i)(I) of the Act.

[4] The Director also highlighted inconsistencies in the record, such as the author of one letter stating she spent time with the Applicant in Mexico in 2002 rather than 2008, and the author of another letter indicating the Applicant's husband may also have been in Mexico in 2008. We acknowledge these discrepancies in the record may raise issue with whether the Applicant had multiple entries into the United States and whether her husband traveled with her to Mexico but are not material to the analysis of whether her son's abuse was connected to her decision to depart and reenter the United States in 2008. The Director also noted that the submitted school records only showed an expulsion in 2009, after the Applicant and her son returned from Mexico. In later submissions of evidence, the Applicant clarified this discrepancy with a letter by the school records manager, who explained that the school records would not evidence an expulsion unless the child did not return to school.

The Applicant filed a motion to reopen and reconsider with the Director, submitting another declaration explaining that she thinks of O-A-'s abusive behavior as starting when he was 13 years old because it was around that age that he began getting into trouble with the police and the situation at school was out of control. She clarified that his "bad behavior" was a part of their lives since he was little. She described him at the age of three as being inconsolable unless he got what he wanted, breaking toys, squeezing and scratching her hands in anger, and hitting and punching his little cousin and breaking her toys. As O-A- grew older he began missing classes and fighting with other students. He started smoking and at the age of nine or ten and began using cologne to mask the scent of marijuana and cigarettes from his clothes. He used guilt and threats to get his way from the Applicant. While in Mexico, O-A- expressed his hate for his mother, calling her stupid and telling her he never wanted to see her, sneaking out of the home and threatening to leave to worry her, yelling at her when she tried to talk to him, and punching walls in his daily fits of rage. The Director denied the combined motion, stating the Applicant had not "established a sufficient nexus" between her departure and reentry and her subjection to battery and extreme cruelty. In support the Director found the evidence insufficient to establish an intent to sell their house in 2008, and her husband's intent to quit his job in 2008 and move to Mexico. The Director found it remarkable that O-A-'s time in Mexico was not mentioned in a psychiatric evaluation, gave no weight to the Applicant's explanation for why O-A-'s expulsions were not in the record, and again questioned the reasonability that the Applicant would decide to move to Mexico in light of her children's health issues, the costs, the country conditions, and stated the Applicant did not establish how her family helped her acclimate to Mexico.

On appeal, the Applicant asserts that the Director incorrectly wanted her to establish more than a "connection" between her abuse and her departure from and return to the United States and did not give sufficient weight to relevant and credible evidence presented in the record. We agree with the Applicant with respect to these arguments.

B. The Applicant Has Established Eligibility for a Waiver

As discussed above, a section 212(a)(9)(C)(i)(I) inadmissibility may be waived in the case of a VAWA self-petitioner if there is a connection between their battering or subjection to extreme cruelty and their departure, reentry, reentries, or attempted reentry into the United States. Section 212(a)(9)(C)(iii). Here, the Applicant has met her burden establishing her eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. at 375-76.

In the RFE, the decision denying her waiver application, and in the decision denying the combined motion to reopen and to reconsider, the Director erred in requiring the Applicant to establish an intent to remain outside of the country due to her abuse, i.e., requiring evidence of her attempt to sell the family home, of enrolling O-A- in a Mexican school, of her husband quitting his job, which is not a requirement of section 212(a)(9)(C)(iii) of the Act. Similarly, the Director indicated that in order to establish a "connection" the Applicant had to demonstrate that the abuse was the only or main reason for her departure or reentry to the United States, i.e., questioning the reasonable nature of the Applicant's decision to depart, and discrediting the abuse as a reason for her reentry because there were other factors involved in the decision to return. Again, section 212(a)(9)(C)(iii) requires a connection with her battering or subjection to extreme cruelty and departure or her reentry and does not state the connection needs to be the sole reason. Further, the record contains the Applicant's credible testimony detailing her son's abusive behavior. By approving the VAWA application, the

Director determined the Applicant's testimony regarding her abuse was credible. In adjudicating the waiver, the issue is whether the Applicant met her burden in connecting the abuse that was the basis of the VAWA petition to her departure or reentry by a preponderance of the evidence, not to re-adjudicate whether the abuse existed or whether it was reasonable that a 12-year-old child would cause her to depart for Mexico.

The Applicant credibly testified that her son's behavior was rebellious and out of her control when she and her husband decided the family would move to Mexico. She explained her intent was to get him away from his friends and environment. Prior to returning to Mexico, O-A- was using drugs, involved in gangs, and in the juvenile system. Three years later, the Applicant and her husband filed for court intervention listing a number of violent behavioral problems, including abuse. School records indicate truancy and behavior problems dating back to 2004. The record therefore supports the Applicant's testimony that she has been dealing with her son's behavior prior to their return to Mexico. Further, the Applicant detailed the verbal, emotional and psychological abuse she faced while in Mexico on account of her son, and explained the abuse was one of the reasons she decided to return to the United States. While the Applicant need only establish a connection between her departure or her reentry into the United States and her battery and subjection to extreme cruelty, she has established a connection by a preponderance of the evidence to both her departure and her reentry.

The Applicant also raises arguments on appeal regarding whether she merits a waiver of inadmissibility as a matter of discretion. The discretionary analysis is a separate, additional component of adjudicating the waiver request and is typically assessed after an officer has determined that the Applicant meets all applicable threshold eligibility requirements. See generally 1 USCIS Policy Manual E.8, https://www.uscis.gov/policymanual (discussing, as guidance, when in the adjudication process discretion is assessed). As the Director did not reach this issue, we will remand this matter to the Director to determine in the first instance whether the Applicant warrants a waiver of inadmissibility in the exercise of discretion.

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