U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22924328

Date: JAN. 6, 2023

Appeal of Los Angeles Field Office Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident (LPR) and seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), for unlawful presence. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The Los Angeles Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility. The Director concluded the Applicant did not establish extreme hardship to their U.S. citizen spouse, her only qualifying relative.

On appeal, the Applicant submits a brief and additional evidence advancing their eligibility claims. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 conclude that a remand is warranted in this case.

I. LAW

A foreign national who has been unlawfully present in the United States for a period of more than 180 days but less than 1 year, and who again seeks admission within three years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i)(I) of the Act. To establish eligibility for a waiver of unlawful presence under section 212(a)(9)(B)(v) of the Act an alien must show, as a preliminary matter that refusal of admission would result in extreme hardship to the alien's U.S. citizen or lawful permanent resident spouse or parent.

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).

Once the foreign national demonstrates the requisite extreme hardship, they must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(a)(9)(B)(v) of the Act. The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N 296, 299 (BIA 1996).

II. ANALYSIS

The only issue on appeal is whether the Applicant has demonstrated their U.S. citizen spouse (K-) would suffer extreme hardship upon denial of the waiver application.[1] The Applicant was in possession of a border crossing card and made several entries into the United States as a nonimmigrant visitor. The Applicant overstayed her period of authorized stay then subsequently departed the United States for a trip abroad. Upon her return, she was placed in removal proceedings as a nonimmigrant who failed to comply with the conditions of their visa and remained in the country for a longer period than was permitted. The Applicant filed this waiver application as well as an application to adjust status, after which an Immigration Judge terminated the Applicant's removal proceedings. The Director denied the waiver application before us.

A. Limited Duration of the Inadmissibility Provision

First, we note an updated policy as it relates to section 212(a)(9)(B)(i)(I). During the pendency of the Applicant's appeal, USCIS issued policy guidance clarifying inadmissibility under section 212(a)(9)(B) of the Act. *See generally* 8 *USCIS Policy Manual* O.6, https://www.uscis.gov/policymanual; *see also* Policy Alert PA-2022-15, *INA 212(a)(9)(B) Policy Manual Guidance* (June 24, 2022), https://www.uscis.gov/sites/default/files/document/policy-manual-updates.

The policy guidance clarifies that the statutory 3- or 10-year bar to readmission under section 212(a)(9)(B) begins to run on the day of departure or removal (whichever applies) after accrual of the period of unlawful presence, but a foreign national subject to the 3- or 10-year bar is not inadmissible to the United States under section 212(a)(9)(B) unless they depart or are removed and seek admission within the 3- or 10-year period following their departure. *See generally* 8 *USCIS Policy Manual*, *supra*, at O.6(B).

The policy guidance further clarifies that a foreign national determined to be inadmissible under section 212(a)(9)(B) but who again seeks admission more than 3 or 10 years after the relevant departure or removal is no longer inadmissible under section 212(a)(9)(B) even if they returned to the United States, with or without authorization, during the statutory 3- or 10-year period because the statutory period after that departure or removal has ended. *See id.* Although the Applicant remains inadmissible as of the date we issue this decision—we observe that provided they do not depart the United States for any reason (e.g., consular processing), they will no longer be inadmissible under

[1] We utilize initials to protect individuals' identities.

section 212(a)(9)(B) after August 21, 2023. And as the Director did not identify any other inadmissibility grounds, it appears the Applicant would no longer be inadmissible and would be eligible to adjust their status to that of an LPR.

This touches on another issue the Applicant addresses in the appeal brief. The applicant contests the Director's findings that she would only be inadmissible for fewer than three years and she would either only need to be separated from K- for that short period of time, or K- would only need to move to Mexico for that shorter period. The Applicant notes that if she departs the United States to live in Mexico for the duration of her current inadmissibility ground, she could be subject to the 10-year bar under section 212(a)(9)(B)(i)(II) instead of the three-year bar under which she is currently inadmissible.

B. Extreme Hardship

We begin noting the Director erred when they did not adequately consider the Applicant's claims or evidence, and based on that shortcoming we will remand the matter to the Director to fully analyze those factors. First, the Director dismissed evidence in the form of a psychological evaluation due to factors unrelated to the evaluation's content. The Director appears to have ascribed the evaluation with significantly diminished value based on the amount of time the clinician spent with K- and because she did not seek the type of treatment recommended in the evaluation. Although these, and other factors, may sometimes tend to weigh against this type of evidence, the Director should raise those factors while engaging with the content of the evidence an applicant provides.

What is required is that the previous trier of fact consider the issues raised and announce its decision in terms sufficient to enable an appellate body to perceive that it has heard and thought and not merely reacted. *Rodriguez-Jimenez v. Garland*, 20 F.4th 434, 435 (9th Cir. 2021). The decision must create the conviction that it "considered and reasoned through" the highly relevant evidence. *Farah v. U.S. Att'y Gen.*, 12 F.4th 1312, 1329 (11th Cir. 2021). We are not convinced that the Director met this standard here.

On appeal, the Applicant raises the psychological evaluation as a salient form of evidence that the Director should have engaged with to determine whether the psychological effects of K-'s situation might warrant an extreme hardship finding. Now on appeal, the Applicant submits a second psychological evaluation. The Director should consider these evaluations in conjunction with the other claims in the record, to include K-'s claim surrounding her parents' deportation and how the effects of this situation have caused that trauma to resurface.

Additionally, the Applicant claims the Director did not adequately discuss the country conditions reports for Mexico, to include an increased hazard for same sex couples, financial and medical hardships, and the claimed hardships in the aggregate. On remand, the Director should ensure those topics are sufficiently addressed, to include the new evidence the Applicant provides on appeal.

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