U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28398308

Date: NOV. 13, 2023

Appeal of Hartford, Connecticut Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Albania 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 a crime involving moral turpitude and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h). 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 Hartford, Connecticut Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant did not establish that her qualifying relative, her lawful permanent resident (LPR) spouse, would experience extreme hardship if she were denied the waiver.

The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and contends that her LPR spouse would experience extreme hardship if her waiver were denied. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *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.

I. LAW

Individuals found inadmissible under section 212(a)(2)(A) of the Act may seek a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). Section 212(h) of the Act provides for a discretionary waiver if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter (Section 212(h)(1)(B)).

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). Additionally, hardship to the applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

II. ANALYSIS

In order to establish eligibility for a waiver pursuant to section 212(h) of the Act, the Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case her LPR spouse. Section 212(h) of the Act. 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.* In the present case, the record contains no statement from the Applicant's spouse indicating an intent to remain in the United States or relocate to Albania if the Applicant's waiver application is denied. The Applicant must therefore establish that if she is denied admission, her qualifying relative would experience extreme hardship both upon separation and relocation.

With the waiver application, the Applicant submitted statements from herself and her qualifying relative spouse. She also submitted copies of her spouse's medical records, copies of monthly bills and accrued debts, copies of both of their pay records, copies of bank statements, a copy of their 2020 U.S. Income Tax Return, a copy of her spouse's psychological evaluation, and country conditions information for Albania.

In denying the waiver application, the Director outlined and detailed all of the evidence submitted by the Applicant and determined that it was not sufficient to establish that her spouse would experience hardship that rises to the level of "extreme," as required.

On appeal, the Applicant does not contest the finding of inadmissibility, a finding supported by the record.[1] She contends that her spouse will experience extreme hardship in the form of economic and emotional difficulties as a result of her waiver being denied. She submits additional evidence and asserts that the record contains ample evidence of the extreme hardship her qualifying relative spouse would suffer if he became separated from the Applicant or if he relocated to Albania with her. The

[1] In 2019, the Applicant was found guilty of a crime involving moral turpitude in Albania.

Applicant submits copies of U.S. Income Tax Return Transcripts for 2019, 2020, and 2021; a copy of their U.S. Tax Return form for 2022; updated copies of her spouse's medical records indicating that he has experienced mild disc degeneration and mild loss of disc height resulting from a car accident in August 2019 and has attended physical therapy at least eight times between February and April 2022; a copy of their outstanding student loan for $13,000; copies of medical records for the Applicant showing a spinal cord injury resulting from a car accident in February 2022; a copy of a Freedom of Information Act (FOIA) request for the interviewing officer's notes relating to the Applicant's statements about the racial tensions with her spouse's family; copies of previously submitted statements from the Applicant and two friends recalling the racial tensions between the Applicant and her spouse's family; a copy of an updated psychological evaluation of the Applicant's spouse; and country conditions information for Albania.

Our review indicates that the Director properly considered all the relevant evidence of extreme hardship upon separation in the aggregate in concluding that the extreme hardship requirement was not met. Further, contrary to the Applicant's assertions, the record before us, including the evidence on appeal does not establish that the Applicant's spouse would experience extreme hardship upon separation. In his statement before the Director, the Applicant's spouse outlined their monthly expenses and total debt, along with their shared income. He indicated that the Applicant worked two jobs, and without her income he would suffer extreme financial hardship and would have to rely on government assistance to financially support himself. He recalled that he was in a car accident in August 2019 that resulted in "severe neck pain, mid back pain, lower back pain, and hip pain," the symptoms of which have returned and he has had to restart physical therapy sessions. He explained that because of the resurfaced symptoms, he has not been able to work like before and their monthly expenses have increased. He generally asserted that their current financial situation, coupled with his "emotional and financial suffering" if the Applicant is not granted the waiver, has resulted in his diagnosis of adjustment disorder with mixed anxiety and depressed mood. He indicated that he has been feeling hopeless and in despair; he has had trouble falling asleep and wakes up repeatedly during the night; he has lost his appetite; he experiences difficulty focusing, concentrating, and paying attention; he becomes persistently sad and chronically anxious; he experiences "crying spells"; he has severe headaches; he experiences difficulty breathing; and he is nervous all of the time. Further, in her statement before the Director, the Applicant apologized for her past mistake and accepted accountability for her inadmissibility. She stated that her spouse constantly worries about the adverse psychological impact of their separation and reiterated that her spouse would experience extreme financial and emotional hardship upon their separation.

In the October 2021 psychological evaluation of the Applicant's spouse, the psychologist diagnosed him with adjustment disorder with mixed anxiety and depressed mood. The evaluation recounted the spouse's statements where he indicated that because of his family's racial bias against the Applicant, the only way for them to enjoy their lives together is for her to remain in the United States with him. It stated that the spouse developed depressive and anxiety-based symptomology as a direct result of his fear of becoming separated from his wife (the Applicant). In the April 2023 psychological evaluation of the Applicant's spouse, the psychologist reiterates his diagnosis of adjustment disorder with mixed anxiety and depressed mood, and indicates that there is a direct connection between his depressive and anxiety-based symptomology and the fact that his family has made it clear to him that they do not accept his wife. The evaluation generally concludes that the Applicant's spouse is afraid that if his wife had to return to Albania, and he lived with her there, the racial bias of his family would

cause his wife great pain and might damage their relationship, which is the most important relationship of his life.

Although we are sympathetic to the family's circumstances and do not diminish the emotional and medical hardships to the Applicant's spouse upon separation, including hardship arising from his injuries after a car accident, the Applicant has not established that the claimed hardship as described would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We acknowledge the evidence of psychological hardship upon separation in the record, including evidence that the Applicant's spouse has been diagnosed with the above psychological disorders, and also suffers from spinal injuries and pain as a result of a past car accident. We further acknowledge the spouse's statements regarding financial hardship based in part on his claims that he would be unable to pay the monthly expenses and accrued debts without the Applicant's income. However, while it appears that the household income may have decreased from 2019 to 2022, the record indicates that both the Applicant and her spouse are self-employed. According to the U.S. Income Tax Return Transcript for 2021, the Applicant claimed $3,516 in gross receipts or sales and her spouse claimed $65,705 in gross receipts or sales, and according to their 2022 U.S. Income Tax Return form, the Applicant claimed $15,130 in gross receipts or sales and her spouse claimed $40,310 in gross receipts or sales. The Applicant's spouse generally indicated that he is a delivery driver, but neither the Applicant nor her spouse have specifically addressed their self-employment, provided explanation of their income, or provided evidence of the spouse's recently limited income. The record does not show that her spouse would be unable to continue working or that his income is not sufficient to pay his monthly bills and accrued debt. Additionally, while the spouse indicates that his work has been limited due to the return of his spinal injury symptoms, the record does not establish the severity or frequency of these medical conditions, his prognoses, and the need, if any, for the Applicant's assistance in managing his medical care. The record also does not otherwise show that his physical or mental health conditions adversely affect or limit his ability to work or carry out other activities such that he requires the Applicant's assistance. Accordingly, while we acknowledge the financial hardship claimed by her spouse, the Applicant has not established that the financial hardship to her spouse upon separation would rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

Further, even considering all of the evidence in its totality, the record remains insufficient to show that the Applicant's spouse's claimed medical, emotional, and financial hardships would be unique or atypical, rising to the level of extreme hardship, if he remains in the United States while the Applicant returns to live abroad due to her inadmissibility.

As noted above, because the Applicant's spouse does not clarify whether he intends to remain in the United States or relocate to Albania if the Applicant's waiver application is denied, the Applicant must establish that denial of the waiver application would result in extreme hardship to her spouse both upon separation and relocation to Albania, where both she and her spouse were born and raised. As the Applicant has not established extreme hardship to her spouse in the event of separation, we cannot conclude she has met this requirement. Because the Applicant has not demonstrated extreme hardship to a qualifying relative if she is denied admission, we need not consider whether she merits a waiver in the exercise of discretion. The waiver application will therefore remain denied.

III. CONCLUSION

For the foregoing reasons, upon consideration of the record in its entirety, the Applicant has not established by a preponderance of the evidence that denial of the waiver application would result in extreme hardship to her qualifying relative spouse upon separation. She therefore has not established her eligibility for a waiver of inadmissibility under section 212(h) of the Act.

ORDER: The appeal is dismissed.