U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25051423

Date: APR. 20, 2023

Appeal of Lawrence, Massachusetts Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of China currently residing in the United States, sought to adjust status to that of a lawful permanent resident (LPR), which requires her to show, inter alia, that she is "admissible" to the United States or is eligible for a waiver of inadmissibility. She has been found inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Lawrence, Massachusetts Field Office, denied the application, concluding that the evidence did not establish extreme hardship to the Applicant's only qualifying relative, her U.S. citizen spouse, if the Applicant is denied admission. On appeal, she submits a brief and a separate one-page appeal statement and maintains that her spouse would experience medical, financial, and related emotional difficulties that would amount to extreme hardship if the Applicant is refused admission.

The Applicant has the burden of proof to establish eligibility for the requested benefit 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 (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

Any noncitizen 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, 8 U.S.C. § 1182(a)(6)(C)(i). This inadmissibility ground may be waived if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act. If the noncitizen establishes the requisite hardship, they must also show that their waiver request warrants a favorable exercise of discretion. *Id.*

Whether a 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).

While some degree of hardship to qualifying relatives is present in most cases, the hardship must exceed that which is usual or expected for it to be considered "extreme." *See, e.g.*, *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).

An applicant may show extreme hardship (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. Establishing extreme hardship under both 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 remain in the United States if the applicant is denied admission. *See generally* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda. Here, the Applicant's U.S. citizen spouse, the qualifying relative, does not submit a statement and the record does not clearly indicate whether the spouse intends to remain in the United States or relocate to China with the Applicant if the waiver request is denied. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

II. ANALYSIS

As an initial matter, the record supports the Director's undisputed determination that the Applicant is inadmissible under 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation.[1] The only issue before us is whether she has shown extreme hardship to her spouse if she is denied admission for purposes of establishing eligibility for a waiver of inadmissibility under section 212(i) of the Act.

The Director determined that the evidence of the claimed difficulties related to the Applicant's spouse did not individually or collectively show that he would experience extreme hardship upon relocating to China with the Applicant. In support of the waiver request, the Applicant submitted before the Director, among other documents, her statement, various medical records for the Applicant's spouse and his parents, the couple's financial documents, their first child's school documents, and family photographs. The record contains no statements from her spouse or any other family members.[2] On appeal, the Applicant alleges that the Director failed to consider all the relevant hardship evidence in the aggregate, and maintains that the evidence submitted below shows that if she is refused admission, her spouse would suffer extreme hardship due to his mental health conditions and related emotional and financial difficulties upon relocation. The Applicant submits no new evidence on appeal.

Upon de novo review, the Applicant has not established the requisite extreme hardship to her spouse upon relocation. The record reflects that the Applicant who is 40 years of age and her 45-year-old spouse who became a U.S. citizen in April 2012 were both born in [redacted]

[1] The Applicant admits, and the record establishes, that she previously used a false identity by presenting a fake passport when she attempted to enter the United States in March 2003.

[2] In 2014, the Director denied the Applicant's first waiver request, which then included a short statement from her spouse. The record does not reflect that the Applicant appealed the Director's 2014 denial with us.

China. They have been married since 2006 and they currently live in [redacted], Massachusetts, with their two minor U.S. citizen children who were born in 2007 and 2012 and the spouse's LPR parents who came to the United States in 2014. The record before the Director also included medical documentation indicating that the Applicant's spouse, who is an experienced restaurant cook, has been diagnosed with and takes medication for generalized anxiety disorder and recurrent, unspecified major depressive disorder. The Applicant also submitted before the Director documents indicating that their only source of income is a Chinese takeout restaurant, which they have owned and operated full time since 2014. They also asserted before the Director that they purchased their first home in 2019 and still owe about $130,000 in mortgage.

Contrary to the Applicant's assertions on appeal, the record does not establish error in the Director's decision or otherwise show that the Director improperly considered the hardship evidence. Rather, the record reflects that the Director properly considered all the relevant evidence, including the spouse's mental health diagnoses as well as related cultural, emotional, and financial difficulties.

We acknowledge, as did the Director, evidence, including the Applicant's statement and the spouse's medical records, showing that the spouse has been suffering from depression and anxiety for many years and receives medical care, including routine checkup appointments and medications, for his diagnosed mental health conditions. According to the Applicant, her spouse has been experiencing depressive episodes "on and off, for the past few years." She also stated that the spouse has sleep and irritability problems, hears voices at times, and his extreme anxiety is in part worsened by drinking and smoking and due to her immigration issues. She maintains on appeal that relocation to China will further worsen her spouse's anxiety and depressive symptoms. However, the record does not establish the severity or frequency of the spouse's mental health conditions and related symptoms to show that they affect his ability to perform daily tasks, including social functioning, ability to work, and managing his mental health conditions. As the Applicant acknowledged, the spouse continues to take medications and has been managing his mental health conditions while working full time for many years to support his family. Further, the record does not show that his condition would worsen or that he would be unable to obtain mental health treatment in China, where he was born and raised and is familiar with the language and culture. While we acknowledge the Applicant's assertions regarding her spouse's anxiety and depressive symptoms, apart from the spouse's prescription medication and general follow-up visits, the medical evidence before the Director does not discuss his prognoses and the record does not otherwise establish that he cannot continue similar treatment in China. Moreover, as the Director noted, the record indicates the spouse's mother travelled from the United States to China in 2019 for a surgery, which appears to contradict the Applicant's claim that the treatment her spouse needs is unavailable in China.

On appeal, the Applicant also argues that the Director disregarded the emotional hardship her spouse would experience due to the difficulties their U.S. citizen children and the spouse's LPR parents would suffer upon the Applicant's and her spouse's relocation. However, the record is unclear if the children would remain here or relocate to China with their parents. Moreover, apart from stating that her spouse is concerned with the youngest child's school performance, the Applicant in her statement before the Director provided no further detail or information to establish hardship to the spouse arising from the difficulties the couple's children would suffer either upon their separation from or relocation with their parents, and as stated, the spouse has not provided any statement in these proceedings, including on appeal. Although the Applicant also noted that the children were born in the United States and have

family ties here, the record also indicates that the children have visited China on at least one occasion in 2014 and lived with their paternal grandparents before returning to the United States later that year.

The Applicant also asserts that her spouse would experience addition emotional hardship upon relocation as he would be separated from his LPR parents and sibling in the United States and has no family ties in China. However, again, the record is unclear as to whether the spouse's parents would remain in the United States or relocate to China with them. Further, although the Applicant's statement indicates that the spouse is caring for and living with his parents, the record does not show the extent to which they rely on him or require his assistance on a day-to-day basis. While the record, including the Applicant's statement and the spouse's parents' medical evidence, indicates that his parents are overweight with high cholesterol and they complain about their "eye problem," the Applicant specifically stated before the Director that they have no serious health issues. Although she also stated before the Director that her spouse is concerned with his mother who travelled to China in 2019 for "a surgery," the record contains no additional information regarding his mother's health. The record also reflects that the Applicant's brother and her spouse's sister also live in the United States, and the record does not show that they cannot provide the spouse's parents with financial, physical or emotional assistance as needed in the absence of the Applicant and her spouse.

As for financial hardship, the Applicant reasserts on appeal that her spouse has no financial assets, resources, or connections in China, that both of their families are all in the United States, and that he will face severe economic hardship upon relocation, in part because their takeout restaurant business is the only source of income for his family. The Applicant provided evidence before the Director that they still owe $130,000 in mortgage since they purchased their home in 2019 for $245,000. She also provided other financial information as to their monthly expenses, joint tax returns, as well as joint bank statements indicating that they had $21,000 as of January 2022. However, the Applicant did not otherwise provide further details as to their potential financial difficulties upon relocation and does not assert that they would be unable to work and earn a living in China, where they were both born and raised, or that they would be unable to sell and reallocate their assets to assist with their relocation. While we acknowledge that they will experience financial loss if they relocate to China, the Applicant has not demonstrated that the resulting hardship is beyond the common or typical results of relocation.

Lastly, the Applicant asserts generally through counsel, that her spouse would suffer relocation hardship as a "protected asylee" who "suffered past persecution in China." However, unsubstantiated assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Here, as noted, the spouse did not submit a statement and the Applicant's statement does not address any fears her spouse may have of being mistreated or harmed in China. Further, the record reflects that the Applicant's spouse was granted asylum over 15 years ago and the couple has sent their children back to China at least once since then. The record is unclear as to whether the spouse also returned to China after being granted lawful permanent residence status and becoming a U.S. citizen. Consequently, in the absence of probative testimony or evidence, the fact the spouse was granted asylum is not sufficient to establish that he would be harmed or mistreated upon relocation to China over 15 years later.

Even considering the evidence its totality, the Applicant has not shown that the claimed emotional, physical, and financial hardship to her spouse upon relocation would go beyond the common results of deportation and rises to the level of extreme hardship. As stated, the Applicant must establish that

denial of her waiver request would result in extreme hardship to her spouse both upon separation and relocation to China. As she has not shown extreme hardship to her spouse in the event of relocation, she has not met this requirement. Because the Applicant has not established extreme hardship to a qualifying relative if she is denied admission, we do not reach whether her waiver request warrants a favorable exercise of discretion. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.