U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24626414

Date: APR. 25, 2023

Appeal of Royal Palm Beach, Florida Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for having sought admission to the United States through fraud or willful misrepresentation. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would cause extreme hardship to a qualifying relative, or qualifying relatives.

The Director of the Royal Palm Beach, Florida Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish the Applicant's U.S. Citizen spouse or lawful permanent resident (LPR) mother would experience extreme hardship if she were refused admission to the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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

A noncitizen who, by fraud or willful misrepresentation, seeks or has sought to procure a visa, documentation, or admission into the United States, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

To overcome this ground of inadmissibility, a noncitizen may request a waiver under section 212(i) of the Act, which requires them to show that refusal of admission would result in extreme hardship to a U.S. citizen or LPR 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 noncitizen 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.

II. ANALYSIS

The Director found the Applicant inadmissible for having committed fraud or material misrepresentation to obtain a visa. The Applicant does not contest this determination on appeal, and it is supported by the record.[1] The remaining issues on appeal are whether the Applicant has demonstrated extreme hardship to her U.S. citizen spouse or LPR mother if the waiver is not granted, and if so, whether she merits a waiver as a matter of discretion.

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. Establishing extreme hardship under both of these 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. *See generally* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual (explaining, as policy guidance, determinations of extreme hardship upon separation and relocation). In this case, the Applicant's spouse and mother do not clearly indicate whether they would relocate to Brazil or remain in the United States if the waiver is denied. The Applicant must therefore establish that if she is denied admission, either her spouse or her mother would experience extreme hardship upon separation and also upon relocation.

The Director denied the waiver application, finding no extreme hardship to either the Applicant's U.S. citizen spouse or LPR parent.[2] The Director indicated that the Applicant's mother had not outlined the extreme hardship she would suffer in the event of a separation from the Applicant. The Director

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[1] The record reflects that the Applicant applied for a nonimmigrant visa in 2011. In this application, she stated that she had previously visited the United States in 2006 and remained for 15 days before departing. The Applicant had in fact remained in the United States until 2009. Upon departure in 2009, the Applicant had been unlawfully present in the United States for over one year and was inadmissible for a period of ten years unless she obtained a waiver. The Applicant was granted a new nonimmigrant visa waiver in 2011 and reentered the United States in 2012 without a waiver. The misrepresentation regarding her prior period of unlawful presence was material as the Applicant was granted a nonimmigrant visa to which she was not entitled absent a waiver of inadmissibility.

[2] The Director's decision appears to primarily focus on hardship if the qualifying relatives remain in the United States. However, as noted above, the record does not contain a statement of intent from either qualifying relative indicating that they would remain or relocate with the Applicant. Therefore, extreme hardship must be evaluated under both scenarios.

acknowledged that a hardship waiver had been approved for the Applicant's father in an unrelated application but indicated that it had no bearing on the case.

In the determination of the spouse's extreme hardship, the Director considered the spouse's claim of a history of alcohol abuse or dependency. The Director concluded that, because he had not professed to being a habitual drunkard when applying for naturalization, the spouse's claims raised a clear conflict in the record, and no independent evidence of alcohol dependency was provided.

With respect to financial difficulties, the Director determined that it would be unfortunate for the spouse to have to close his martial arts school but noted that he could fall back on other skills and work as a pool technician or server. The Director did not find evidence of financial debt, as minimum payments were being made on all accounts.

Turning to the family situation, the Director noted that the Applicant's older child showed emotional and behavioral issues but did not find these to be unusual in the event of family separation. The Director also noted the younger child's development issues but found that insufficient evidence had been provided reflecting special education opportunities in Brazil. In particular, the Director noted that evidence regarding the cost of private education was not provided, and that insufficient evidence was provided to show that special education programming was not offered in public schools. Ultimately, the Director concluded that there was insufficient evidence showing that Applicant's younger son would lack access to therapy.

Finally, the Director considered evidence of country conditions and acknowledged the political instability and policing issues but did not find that this would have a particular impact on the Applicant or her family. The Director did not find extreme hardship to the Applicant's LPR mother because she had failed to clearly state what extreme hardship would be suffered in the event of the Applicant's return to Brazil.

On appeal, the Applicant argues that extreme hardship has been established with respect to her spouse. The Applicant indicates that the Director's reliance on the habitual drunkard portion of her spouse's naturalization application was misplaced. She argues that the standard for habitual drunkenness does not encapsulate all alcohol abuse, and that the findings of Applicant's spouse's therapist showing a possible exacerbation of mental health issues should have been credited.[3] In particular, she highlights that an exacerbation of her spouse's mental health problems would limit or preclude his ability to work. The Applicant emphasizes the current elevated levels of violence and political turmoil in Brazil, and notes that there need not be a particularized risk to the Applicant or her family; a general showing of elevated risk is relevant to the hardship analysis.

In regard to the financial impacts were the waiver not granted, the Applicant argues on appeal that there is no requirement to show destitution in the event of a denial. Rather, she argues that deteriorating mental health jeopardizing her spouse's ability to run his business would be an economic hardship. Furthermore, a deterioration in mental health would impact his ability to carry out any type of employment, including those positions he previously held. The Applicant also stresses the difficulty

[3] The habitual drunkard standard is relevant to a finding of good moral character required for naturalization petitions. We decline to engage in an analysis of its meaning in this context, and we will analyze the stated claims of prior alcohol dependency of the Applicant's spouse as we would any other evidence of hardship.

in obtaining gainful employment in Brazil and notes low wages for the types of jobs her spouse previously held.

With respect to their two children, the Applicant argues that hardship to her children will have a direct impact on her spouse and this evidence was not adequately considered by the Director. The Applicant provides additional evidence regarding the cost of private education in Brazil as well as additional reports detailing the lack of special education programs in public schools.

Finally, with respect to the Applicant's mother, she notes that her mother has medical conditions that are exacerbated by stress. The Applicant asks us to consider the grant of the waiver application for her father and consider how this impacts her mother; she cites to USCIS policy discussing prior trauma suffered by a qualifying relative. She argues that the grant of the father's waiver application and the personal statement discussing her mother's stress levels are sufficient to demonstrate hardship to her mother.

A. Separation-Related Hardship

The Applicant has established extreme hardship to her U.S. citizen spouse in the event of their separation. The record reflects that the Applicant married her spouse in 2019 and they have two children together.[4] The spouse is the primary breadwinner, while the Applicant cares for their two children. The Applicant brings the children to and from school, assists them with homework, and takes their younger son to therapy sessions.

The Applicant's spouse has resided in the United States continuously since 1999 and became a U.S. citizen in 2017. He is the owner and operator of a jiu jitsu school, where he often works from 9 a.m. to 11 p.m. This leaves him unable to complete daily childrearing activities, such as taking the children to school. He also notes that he is unable to take his children to their therapy sessions. He highlights that his youngest son requires speech and occupational therapy, and that the family is also seeking interventions for behavioral problems in their older son. He indicates that he has suffered from alcohol dependency in past and views his wife as a central factor in his current and continued abstinence.

The Applicant provided a psychological opinion indicating her spouse receives treatment for rapid mood swings, insomnia, and anxiety; the clinician highlights that the younger son receives multidisciplinary treatment from a speech therapist, psychologist, and occupational therapist.[5] The Applicant also provided a pediatric therapy report reflecting that her younger son has profound developmental delays, including significant delays in auditory comprehension and expressive language skill for which he is receiving treatment.

The Applicant provided various letters of support from students at her spouse's school. These letters highlight the long hours worked by the Applicant's spouse; as a result, the letters note that the Applicant takes primary caregiving responsibility over their children and also takes primary

[4] The Applicant was previously married to her spouse until 2012; their first child was born during this marriage. Their second son was born after their remarriage in 2019.

[5] While we take this opinion into consideration, it is given limited weight, as it does not include any formal diagnoses or indicate what psychological testing was completed to support a mental health finding. It also provides no details regarding therapeutic interventions that have been undertaken or are recommended.

responsibility for their education. The letter writers attest that the business and the Applicant's children would be negatively impacted by her departure. They also attest that the Applicant attends speech therapy classes with her younger son several times a week and takes both children to and from school and extracurricular activities. Other letters from the Applicant's family highlight the behavioral and emotional problems the Applicant's older son has exhibited upon learning of her possible departure.

After consideration of this evidence, we find that the Applicant's spouse would experience extreme hardship upon separation. The impact of separation and relocation on the Applicant's children would in turn increase the level of hardship that would be experienced by her spouse. USCIS considers a substantial displacement of care of a qualifying relative's children to be a particularly significant factor when evaluating extreme hardship. To show this significant factor, an applicant must show that the relationship between the affected children, the qualifying relative, and the applicant is bona fide. This relationship has been established in this case, as the Applicant, her spouse, and her children reside together as a family unit.[6]

We have determined that substantial displacement of childcare would be present in the event of a separation in this case. As noted above, the Applicant is currently the primary caretaker for their two minor children and bears primary responsibility for taking their younger son to his frequent therapy sessions. The Applicant's contributions to the household allow her spouse to spend a significant number of hours running his business. A refusal of the Applicant's admission would result in a substantial shift of these caretaking responsibilities to her spouse. This would impact her spouse's ability to earn income for the family, as he would be unable to work while carrying out these childcare responsibilities.[7] Furthermore, the loss of the parent with primary oversight of their younger son's therapeutic interventions would hinder their son's cognitive development and impede the Applicant's spouse's ability to provide a healthy and caring environment. This substantial displacement of care, considered along with the other factors considered by the Director and outlined above, is sufficient to establish extreme hardship to the Applicant's spouse in the event of separation.

We note that the record does not clearly indicate whether the minor children would accompany their mother in the event of a separation. However, we also find that the Applicant's spouse would experience extreme hardship if he were to remain in the United States while his wife and children departed. While the spouse would be relieved of primary childcare responsibilities and would likely be able to keep his school open, we consider the emotional hardship he would experience when faced with a lengthy separation from his minor children. While some financial difficulties would be mitigated by the spouse maintaining his current salary rather than earning wages in Brazil, he would still be required to support himself and his children in different households. As outlined more fully below, the Applicant's spouse would also be impacted by the hardships their children would face upon relocation to Brazil. These factors considered in the aggregate reach the level of extreme hardship.

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[6] We note that the Applicant and her spouse were divorced between 2012 and 2019. However, marriage dissolution documents provided by the Applicant confirm that she and her spouse continued to share parenting and decision-making authority with respect to their older son after the divorce.

[7] We acknowledge the Applicant's argument that the mental strain of separation could cause him to become limited in his abilities to run his business or pursue other employment. We have not been provided with evidence to support the contention that her spouse suffers from mental health issues severe enough to impede daily functioning in the event of the Applicant's refusal of admission.

B. Hardship upon relocation

The Applicant has also established extreme hardship to her spouse in the event of his relocation to Brazil. We note that many of the difficulties generally faced by relocating spouses are not present in this case. Specifically, the Applicant is a Brazilian native who lived in the country until he was twenty-one. He speaks Portuguese fluently and is able to obtain some services in Brazil as needed, as evidenced by his remote psychological treatment in Brazil. However, we balance these considerations against his lengthy period of residence in the United States. He has lived almost the entirety of his adult life in the United States and is a naturalized U.S. citizen. He has established significant community ties through his participation in church and his business.

The Applicant also argues that her spouse would suffer significant economic hardship upon relocation. First, he would be forced to close his existing business in Florida. In addition, he would have a significantly reduced income in Brazil. The Applicant acknowledges that he would likely be able to obtain employment in other fields where he has previously worked, such as pool maintenance. However, the Applicant's spouse indicates that the family have taken on debts to run his martial arts school that would be difficult to repay if the business were to close. We acknowledge the Director's determination that the family is current on the minimum payments for these debts. However, the fact that the accounts are not delinquent does not negate the fact that the debts exist, and we take into consideration the reduced ability to repay these amounts in the event of relocation.

The Applicant and her spouse also focus on the educational access issues their sons would face in Brazil. They note that special education programs are generally lacking in Brazil's public schools, and that the private institutions offering these programs are prohibitively expensive. The Director noted that there was insufficient evidence demonstrating that these programs were not offered in public schools, that the list of private schools proffered by the Applicant was not comprehensive, and that insufficient proof of pricing had been provided. The Applicant provided some additional evidence to address these concerns on appeal, including evidence of pricing. After consideration of this evidence, we agree with the Director that the Applicant has not established enrollment in a private institution as a necessary consequence of her son's relocation. However, we do take notice of her son's particular educational needs and consider that meeting these needs increases the hardship to a level not typically present in the event of relocation.

In addition to educational shortfalls, the Applicant and her spouse argue that they would also have difficulty in funding the therapeutic interventions their younger son needs. They argue that this struggle to meet the basic needs of their children would necessarily impact the Applicant's spouse's emotional wellbeing. Furthermore, the need to pay for therapy would present a significant economic hurdle. We note that the Applicant has not provided evidence regarding the availability or cost of therapy in Brazil. However, we acknowledge the additional burden of initiating a new comprehensive care plan in Brazil. We also take into consideration that relocation to Brazil would disrupt an ongoing therapeutic relationship. Her younger son has been receiving treatment for cognitive and behavioral development issues that would be necessarily interrupted upon relocation.

Finally, the Applicant argues that her spouse and children would be negatively impacted by high levels of criminality and civil unrest in Brazil. The Applicant provided country conditions evidence showing

elevated levels of violence and corruption and a copy of the Department of State's travel advisory. The travel advisory reflects high levels of violent crime in urban areas at all times of day or night and advises that U.S. government employees not travel to certain areas. However, we are able to give this report only limited consideration, as it does not indicate that this elevated risk is present country-wide, and the Applicant has not provided a statement of intent regarding where she would reside.

After considering the record as a whole, we find that many of the factors raised by the Applicant to show hardship in the event of relocation are common consequences of relocation to a new country. However, the Applicant has demonstrated additional hardship not typically present in certain areas, including economic impact, as well as educational and medical access for their children and the resulting hardship on her spouse. When considered in the aggregate, these additional hardship factors are sufficient to establish that the Applicant's spouse would experience extreme hardship upon relocation.[8]

III. CONCLUSION

The Applicant has established extreme hardship to her U.S. citizen spouse in the event of either separation or relocation to Brazil. To obtain a waiver, the Applicant must demonstrate that she merits a favorable exercise of discretion. We remand to the Director for an initial finding 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.

[8] The Applicant has established extreme hardship to her U.S. citizen spouse in the event of either relocation or separation, therefore we will not address the additional arguments made regarding hardship to her LPR mother.