U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22924101

Date: DEC. 8, 2023

Appeal of Lawrence, Massachusetts Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of China 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 fraud or misrepresentation and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). 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 Lawrence, Massachusetts Field Office denied the application, concluding that the record did not establish that the Applicant's qualifying relative, his LPR mother, would experience extreme hardship if his waiver application is denied. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant provides additional medical documentation related to his mother's health conditions and asserts that he has established extreme hardship to his LPR mother.

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 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). USCIS has the discretion to waive this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act.

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(i) of the Act. The burden is on the noncitizen 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). We must balance the adverse factors evidencing an applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted).

II. ANALYSIS

The Applicant does not contest his inadmissibility on appeal and we incorporate the Director's finding of inadmissibility here by reference.[1] 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. Demonstrating 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. *See id.* 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.* Here neither the Applicant or his qualifying relative have stated whether the qualifying relative will relocate to China or remain in the United States without her son. Therefore, the Applicant must establish that his qualifying relative would experience extreme hardship upon both separation and relocation.

In his initial request for a waiver, the Applicant claimed that his mother would experience extreme hardship if his waiver request was denied due to her need for medical care and financial assistance. In support of his initial application the Applicant submitted a medical report for his mother, information related to his U.S. citizen children, a personal statement, a statement from his mother, statements from his siblings, and various financial documents from his business. The Applicant claims that he is his mother's primary caregiver and that his siblings are unable to provide assistance because they have their own families and limited financial resources. The Director determined that the collective evidence was insufficient to establish extreme hardship to the Applicant's LPR mother. Specifically, the Director concluded that the Applicant's mother lived in New York by herself, traveled to China alone on multiple occasions, and has multiple adult children in the United States who could provide assistance if the Applicant were denied a waiver.

[1] The Applicant entered the United States using a photo substituted passport in 1992 and made multiple false claims related to his application for asylum.

On appeal, we first examine hardship to the Applicant's mother due to her health challenges. In his initial personal statement, the Applicant stated that his mother has various health conditions that require monitoring and, as the oldest child, he often helps with his mother's care. The statement also indicated that his mother chose to live on her own in New York. Similarly, in her personal statement to the Director, the Applicant's mother stated that she expects her health conditions to take more managing as she ages and provides examples of how the Applicant provides for his family. In his personal statement on appeal, the Applicant states that following a March 2022 health incident, his mother terminated her lease in New York and now lives with him full time. He indicated that his siblings are unable to assist his mother because of their own health issues. In support of this claim the Applicant has submitted a personal statement, medical documents for his mother and medical documentation for his siblings. The Applicant did not provide any documentary evidence to support his assertion that his mother lives with him in Massachusetts. Nor has the Applicant established that his mother's health status requires residence with him to meet her care needs.

According to the medical documentation provided by the Applicant on appeal, his mother was experiencing chest pains in March 2022 because she stopped taking her medication. The Health Status Report indicates that the Applicant's mother reported that her symptoms had resolved following a cardiac catheterization, a procedure to diagnose heart conditions. The medical documentation does not indicate that the Applicant's mother requires significant assistance or that he, alone, could provide any needed care.

The Applicant states that his siblings are financially and medically unable to care for his mother. To support this claim on appeal he provides medical documentation for three of his siblings. The medical documentation appears to relate to cancer screenings performed in 2021 and normal appointments for health maintenance. The Applicant did not submit evidence on appeal in support of his claim that his siblings are financially unable to support his mother. We acknowledge the statements of the Applicant's three siblings provided with the initial application stating that they care for their own families and do not have the resources to care for their ailing mother. However, in light of the limited detail provided in the statements of the Applicant's siblings and the lack of evidence supporting their claims, the record does not establish that the Applicant's mother would be without the support of her family members should the Applicant be denied admission. It is the Applicant's burden of proof to establish, by a preponderance of the evidence, that he meets the eligibility criteria for the requested waiver. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

The Applicant also claimed to the Director that if he were denied admission and forced to relocate abroad he would have to sell his business, his family's sole source of income. While we acknowledge that the Applicant's relocation abroad may have a negative impact on his business in the United States, he has not established that his spouse or U.S. citizen children would be unable to continue the business once he is removed. Moreover, the Applicant has not established that he is the sole financial support of his mother. The Applicant does not make any additional claims of economic hardship to his mother on appeal or provide sufficient evidence of his mother's financial circumstances.

The Applicant provided a significant amount of evidence related to the potential hardship of his children if he were removed from the United States. For the purposes of a waiver under section 212(i) of the Act, U.S. citizen children are not qualifying relatives. Therefore, we may only consider

evidence of hardship to the Applicant's children in as much as it related to hardship to the qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002). Here, the Applicant has not established that the hardship experienced by his children would result in additional hardship to his LPR mother.

We acknowledge that the Applicant's mother may experience financial and medical hardship as a result of denial of the Applicant's admission, however, the evidence in the record does not sufficiently establish, either individually or collectively, that the financial and medical effects of separation from the Applicant would be more serious than the type of hardship normally suffered when one is faced with the prospect of separation from one's adult child. *See Matter of Pilch*, 21 I&N Dec. at 630-31. Accordingly, the Applicant has not established eligibility for a waiver of inadmissibility under section 212(i) of the Act.[2]

III. CONCLUSION

The Applicant has not established extreme hardship to his LPR mother if he were removed from the United States and she remained. Therefore, he has not established that his mother will experience extreme hardship should his waiver application be denied. We need not reach and hereby reserve the Applicant's arguments regarding extreme hardship upon relocation and whether the Applicant warrants a favorable exercise of discretion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof). The waiver application will remain denied.

ORDER: The appeal is dismissed.

[2] In support of his claim of economic hardship, the Applicant provided corporate tax forms for his restaurant for the years 2018 and 2019. On Part II of Schedule G of the Form 1120, U.S. Corporation Income Tax Return, the Applicant listed himself as the sole owner of voting stock in his business and his citizenship as "US". Should the Applicant seek a waiver of inadmissibility in the future he will need to address the possibility of inadmissibility for false claim to U.S. citizenship under section 212(a)(6)(C)(ii) of the Act. However, because it is not required for our ultimate decision regarding the Applicant's eligibility for a waiver under section 212(i) of the Act, we need not reach a decision regarding inadmissibility on this ground in the current proceeding.