U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29176273

Date: DEC. 8, 2023

Appeal of New York City, New York Field Office Decision

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

The Applicant, a native and citizen of Ghana, 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.[1] *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 New York City, New York Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant did not establish extreme hardship to his U.S. citizen spouse, the qualifying relative. 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 dismiss the appeal.

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. This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to the United States citizen or LPR 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)

[1] In 2016, the Applicant filed a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant (Form I-360) and indicated he was abused by his former spouse. During the adjustment of status interview, he testified that he was not abused but that he filed the Form I-360 to gain employment authorization. As a result, the Director determined the Applicant to be inadmissible for fraud or misrepresentation. The Applicant does not contest the finding of inadmissibility.

(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).

The issue on appeal is whether the Applicant has established extreme hardship to his U.S. citizen spouse and if so, whether he merits a favorable exercise of discretion. The Applicant asserts his spouse would suffer extreme hardship upon separation and relocation because her financial responsibilities, the psychological and emotional hardships of being apart, the challenges of caring for their young son with medical issues, and the difficulties in obtaining medical care in Ghana would all rise to the level of extreme hardship.

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)). An 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, the Applicant did not specify if his spouse would remain in the United States or relocate to Ghana, and thus the Applicant must establish extreme hardship to his spouse upon both relocation and separation. Upon de novo review, the Applicant has not established by a preponderance of the evidence that his spouse would endure extreme hardship upon separation, and we need not consider extreme hardship in the event of relocation.

Regarding hardship, the record contains statements from the Applicant and his spouse, a psychological report, birth certificates for his U.S. citizen son and stepson, and financial documents. The psychological report indicates the Applicant's spouse is suffering from adjustment disorder and that she experiences sadness, distress, and loss of pleasure because of the stress of possible separation from her husband. The report does not indicate a treatment plan or the severity of the condition, and there is no indication the spouse is currently undergoing therapy for this disorder. The record lacks documentation regarding ongoing psychological support for the spouse or how the adjustment order diagnosis affects her day-to-day life. Loss of companionship and emotional support are expected results of separation from a loved one and the psychological report and affidavits do not indicate that the Applicant's spouse would experience emotional hardships that rise to the level of extreme.

The statements in support of the waiver application discuss the difficulties and challenges in caring for their eight-year-old U.S. citizen son who suffers from severe asthma and an injury to his bronchial plexus. Although not a qualifying relative, we recognize that raising a child without his father would

be difficult but note the record does not contain information regarding the son's diagnosis or specific details on the speech and occupational therapy treatment he receives. Without more, there is not sufficient information to explain how the Applicant's absence would create extreme hardship for his spouse in caring for their son.

The Applicant's spouse is the primary wage earner and relies on the Applicant for financial support. His statement indicates that his spouse's income was about $40,000 annually and his was $30,000 when he worked as a security guard. The record also reflects that they recently purchased a home together and that they were paying $6,000 per year for their older son's college tuition. Although the loss of the Applicant's income would create financial challenges for the spouse, it does not rise to the level of extreme hardship. We note that inability to maintain one's present standard of living is a common result of removal. *See Matter of Pilch*, 21 I&N Dec. at 631.

The Applicant has not established by a preponderance of the evidence that his spouse's hardships, considered individually and cumulatively, would rise to the level of extreme hardship upon separation. As such, we need not consider whether he merits a waiver in the exercise of discretion. The waiver application will remain denied.

ORDER: The appeal is dismissed.