U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29095261

Date: DEC. 12, 2023

Appeal of Los Angeles, California Field Office Decision

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

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). The Director of the Los Angeles, California Field Office denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, after concluding he was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud and misrepresentation and that the record did not establish that his U.S. citizen spouse, the qualifying relative, would suffer extreme hardship if the Applicant was refused admission the United States as required for the waiver. 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.

I. LAW

Section 212(a)(6)(C)(i) of the Act renders inadmissible 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, admission into the United States, or other benefit provided under the Act. Section 212(i) of the Act provides for a waiver of the above ground of inadmissibility if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent of the noncitizen. If a noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

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). 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).

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.* In the present case, because the record does not clearly identify whether the qualifying relative, his U.S. citizen spouse, will remain in the United States or relocate, the Applicant must establish that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

II. ANALYSIS

The Applicant does not contest, and the record supports, the Director's determination of inadmissibility under section 212(a)(6)(C)(i) of the Act and therefore he must establish that his U.S. citizen spouse would suffer extreme hardship if he were refused admission in order to establish eligibility for a section 212(i) waiver of such inadmissibility.[1] The Applicant is 51 years old citizen of El Salvador and married his spouse, who is 57 years old, in 1997. They have two U.S. citizen children together who are currently aged 24 and 19 respectively. As evidence of extreme hardship in support of his Form I-601, the Applicant submitted a personal statement wherein he explained that his spouse did not work in order to care for their children and therefore she was dependent on him financially. He further explained that his spouse was dependent on him for spiritual and personal needs, including taking her to and from hospital appointments. Finally, he stated that he considers himself honest and hard working as a mechanic and that he is active at his church. The spouse also provided a statement wherein she attested to the Applicant's good character and claimed that she undergoes endoscopies year after year as a result of polyps in her stomach and needs the Applicant to drive her after she is put under anesthesia. Additional statements were provided by the Applicant's children who described the importance of the Applicant in their lives and to his good character, as well as from other individuals who generally attested to the Applicant's good character. A psychological evaluation conducted in 2022 on behalf of the spouse indicated that she was diagnosed with major depressive disorder and recurrent and moderate and generalized anxiety disorder based in part on the passing of her mother in 1995, two miscarriages in approximately 2014, and the possibility of separation from the Applicant. Medical documentation for the spouse also showed that she had a medical procedure conducted in 2021 that revealed she had gastric polyps and moderately severe chronic and active gastritis. Finally, the Applicant provided additional evidence that included identity and education documents, family photos, various financial documents, and country conditions information for El Salvador.

[1] The Applicant conceded during an interview and the record shows that he provided false information on applications to obtain asylum and temporary protected status in the United States.

On appeal the Applicant asserts the Director erred by omitting from consideration all of the relevant evidence of hardship and by failing to consider such evidence in the aggregate. The Applicant provides no new evidence on appeal.

Initially, the record does not support the Applicant's assertion above. To the contrary, the record indicates that the Director considered all relevant evidence and the arguments raised by the Applicant, but ultimately determined the Applicant did not establish the requisite extreme hardship to his spouse. We are not, however, bound by service center or district director's decisions. *See, e.g.*, *La. Philharmonic Orchestra v. INS*, 248 F.3d 1139 (5th Cir. 2001) (per curiam). And as noted above we review the questions in this matter de novo. After reviewing the evidence submitted with the Form I-601 and the arguments on appeal, the Applicant has not established the requisite extreme hardship to his spouse upon separation. The Applicant claimed that his spouse is dependent on him financially, in part because he has "not let [his] wife work so that she [can] take care of [their] two children." However, while the Applicant has provided tax records and some documentary evidence of their expenses in support of his financial hardship claims, as well as some medical documentation, the record is insufficient, either alone or cumulatively, to establish that the economic detriment the spouse may suffer if they were separated would rise to the level of extreme hardship. In this regard, the record does not show the spouse is unable to work due to her medical conditions as asserted, and instead, based on the Applicant's statement, reflects that her unemployment was by choice in order to raise their children. Her children, however, are now adults and live in the United States, and the record does not reflect that they continue to require her care or that they would be unable to provide financial support to the spouse in the Applicant's absence for any reason in the event the spouse is unable to work and support herself. Additionally, while the spouse may suffer from gastritis and polyps, the record does not establish the nature and severity of her conditions or related symptoms or otherwise show that these medical conditions prevent her from working.

The Applicant also claimed emotional hardship, asserting that his spouse was dependent on him for spiritual and personal needs, including transportation to and from medical appointments. We recognize the length of the Applicant's marriage to his spouse; however, the Applicant has not shown that separation from his spouse in this instance is beyond the "common result of deportation" as noted above. And while the spouse may generally rely on the Applicant to provide transportation to and from her medical appointments, the record does not indicate that she would be unable to attend her medical appointments without her spouse's assistance, particularly as the record shows that she lives with her two adult children and that her sister lives in the same city and neither the Applicant nor his spouse assert that their children would be unable to assist her in providing this transportation. We also recognize the spouse's diagnoses of major depressive disorder and recurrent and moderate and generalized anxiety disorder as described in the 2022 psychological evaluation. However, while the report concludes generally that these conditions "hinder her ability to function with normal daily activities," neither the report, the Applicant's or spouse's statements, nor any remaining documentation in the record clarify the frequency or severity of the conditions, whether further treatment was sought or is required, how the conditions adversely affect her ability to carry out daily activities or ability to find employment, or to what degree she would be dependent on the Applicant as a result for her continued care.

Finally, we acknowledge the country conditions information provided for El Salvador. However, in the absence of probative testimony and evidence from the Applicant and spouse regarding the impact

of these conditions on their lives, this information does not show the requisite hardship to the spouse upon separation.

III. CONCLUSION

When considering the above factors in the aggregate, the Applicant has not established by a preponderance of the evidence that the hardship his spouse would face as a result of separation rises to the level of extreme hardship. As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to his spouse both upon separation and relocation. As the Applicant has not established extreme hardship to his spouse in the event of separation, he has not established his eligibility for a waiver under section 212(i) of the Act. As a result, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion.

ORDER: The appeal is dismissed.