U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29077803

Date: DEC. 13, 2023

Appeal of Buffalo, New York Field Office Decision

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

The Applicant, a national of Guyana, has applied to adjust status to that of a lawful permanent resident. He seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i), for fraud or misrepresentation. 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 Buffalo, New York Field Office denied the waiver request, concluding that the Applicant did not establish the requisite extreme hardship to his U.S. citizen spouse, his only qualifying relative.[1] 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

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. To establish eligibility for a waiver of this inadmissibility the noncitizen must demonstrate, as a threshold requirement, that denial of admission will result in extreme hardship to their U.S. citizen or lawful permanent resident spouse, or parent. 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

[1] The Director denied the Applicant's previous waiver request in 2018 and we dismissed the subsequent appeal in 2019.

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).

II. ANALYSIS

The Applicant does not contest the finding of inadmissibility, which is based on his admission during his adjustment interview that he falsely claimed to be transiting without a visa in order to apply for asylum in the United States and he filed a fraudulent petition under the Violence Against Women Act (VAWA) as an abused spouse of a U.S. citizen.[2] The issues on appeal are whether the Applicant has established extreme hardship to his qualifying relative and, if so, whether he merits a waiver as a matter of discretion. We have reviewed the entire record and conclude that it is insufficient to show that the individual and cumulative hardships to the Applicant's U.S. citizen spouse would rise to the level of extreme if the Applicant were denied admission.

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 generally* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual (providing guidance on the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both of these scenarios is not required if an applicant's evidence establishes 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)). In the present case, the record indicates that if the Applicant's waiver were denied, his spouse intends to relocate with him to Guyana. Therefore, the Applicant must establish that if he were denied admission, his spouse would experience extreme hardship upon relocation.

In support of the waiver application, the Applicant submitted a personal affidavit, a 2019 psychological evaluation and 2018 medical report for his spouse, a 2019 school progress report from his son's special education teacher, two reference letters, and biographical documents. While the record does not contain a statement from his spouse, the Applicant asserts that the possibility of relocating to Guyana has caused physical and psychological difficulties for his spouse and relocation will negatively impact her career and education as a nurse. According to her psychological evaluation, his spouse displays depression and anxiety symptoms and she was encouraged to attend weekly psychotherapy sessions and consult with a psychiatrist for a medication evaluation. His spouse indicated that she did not want to raise their children, who are currently 11 and 14 years old, in Guyana; she is concerned with the country's poor economy, education system, violence, and racial tensions; and she would have to leave her family and friends in the United States. The evaluation states that his spouse was diagnosed with polycystic ovarian syndrome in 2007 and she takes medication to treat her symptoms, which are exacerbated by stress. The Applicant also indicates in his affidavit that his youngest son attends a school that provides speech, occupational, and physical therapy, and he asserts that Guyana does not have therapy or assistance for him.

[2] The Applicant claims the same U.S. citizen spouse will experience extreme hardship if she relocates to Guyana with him.

The Director determined, in part, that the Applicant did not establish that his spouse would suffer extreme hardship and noted that his spouse is originally from Guyana, the country of relocation. The Director concluded that the waiver application lacked probative evidence in support of the extreme hardship claim and the Applicant did not warrant favorable discretion because his actions showed a continued pattern of disregard for the laws of the United States. The Director's decision describes the facts and analysis of the Applicant's case in detail and we incorporate it by reference here.

On appeal, the Applicant asserts that the previously submitted evidence demonstrates his spouse would experience extreme hardship if he were removed to Guyana, the Director either ignored or misrepresented key findings in his spouse's psychological evaluation, and the denial did not take into account the interruption of his spouse's education and career upon relocation to Guyana. In addition, the Applicant submits a news article about his former counsel, who prepared and filed his VAWA petition in 2010 and was disbarred in 2022. He argues that one of the central reasons the Director denied the waiver was the perception that he made numerous fraudulent representations to the government; the Applicant assumed he was complying with the law and not committing fraud by going to his former counsel, who was a licensed attorney; and his former counsel's typical practice was to mislead his clients as he did with the Applicant. The Applicant did not submit additional evidence on appeal relating to his spouse's hardship claim.

Upon review, the Applicant has still not established that his spouse's hardships that would result from relocation to Guyana, considered individually and cumulatively, would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship. The Applicant has not submitted evidence to show that his spouse would lack access to psychological services in Guyana to assist with the depression and anxiety symptoms noted in the psychological evaluation, medical care to continue treatment for her polycystic ovarian syndrome, or career and educational opportunities as a nurse. Further, the record indicates the spouse was born in Guyana and, thus, she would not experience a significant cultural adjustment upon relocation. Moreover, though the Director noted that the Applicant did not provide evidence to support his spouse's fear of country conditions in Guyana, the Applicant has not submitted additional evidence of country conditions on appeal and instead argues that his claims are supported by the U.S. Department of State Country Reports on Human Rights Practices. Regarding the claimed hardship to the Applicant's son, he is not a qualifying relative for a section 212(i) waiver and hardship to him can only be considered where there has been a connection to the hardship the spouse would experience. The Applicant has not provided documentation to show his son will not have access to care in Guyana or otherwise demonstrate hardships the spouse may experience as a result of the son's relocation to Guyana.

A review of the record in its totality supports the Director's determination that the Applicant has not established his spouse's difficulties upon relocation would go beyond the common results of removal and rise to the level of extreme hardship. As such, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion. The waiver application will remain denied.

ORDER: The appeal is dismissed.