U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26517329

Date: JUN. 09, 2023

Appeal of Providence, Rhode Island Field Office Decision

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

The Applicant, a native and citizen of Haiti residing in the United States, has applied for adjustment of status to that of a lawful permanent resident (LPR). The Applicant has filed Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), seeking 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 Providence, Rhode Island Field Office denied the application, concluding that the record did not establish that the Applicant's U.S. Citizen spouse, the only qualifying relative, would experience extreme hardship if the Applicant were refused admission to the United States, as required for purposes of a waiver under section 212(i) of the Act. 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

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).

A noncitizen may request a waiver of this ground of inadmissibility available 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).

If the noncitizen demonstrates the requisite extreme hardship, they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

II. ANALYSIS

The Director found the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act for having committed fraud or material misrepresentation to obtain admission to the United States. On appeal, the Applicant notes that they were previously before a judge who informed them their deportation charges had been waived. They argue that bringing back this charge is discriminatory, and further note that the fraud and misrepresentation was only undertaken to avoid serious harm or death in Haiti.

The record reflects and the Applicant does not contest that they entered the United States by using a passport and visa issued to another individual. The Applicant obtained an immigration benefit as a result of this action as they gained entry into the United States using another individual's identity documents. Based on this, the Director properly determined the Applicant to be inadmissible for fraud or willful misrepresentation, and they therefore required a waiver of such admissibility available under section 212(i) of the Act. Although the Applicant maintains that their deportation charges had been waived, the record does not reflect that the Applicant's inadmissibility for fraud or misrepresentation was previously waived. Therefore, the Applicant must demonstrate eligibility for a waiver of this ground of inadmissibility by showing, among other things, extreme hardship to their U.S. citizen spouse. Section 212(i) of the Act.

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 does not clearly indicate whether they would relocate to Haiti or remain in the United States if the waiver is denied. The Applicant must therefore establish that if they are denied admission, their spouse would experience extreme hardship upon separation and also upon relocation.

The Director denied the waiver application, finding that the Applicant had not established extreme hardship to their U.S. citizen spouse. The Director noted that the Applicant had submitted a declaration as well as a signed declaration from their spouse. In the determination of the spouse's extreme hardship, the Director noted that some level of hardship had been established, but that the hardship did not rise to the level of extreme hardship.

The Applicant submitted a waiver application outlining various factors that would cause hardship. First, the Applicant noted that their U.S. Citizen daughter was attending college, and that the Applicant and their husband needed to support her. The Applicant also argued that removal would have a disastrous effect on their family, as they assist their spouse with rent and keeping things in order. The Applicant noted in the waiver application that the entry by fraud or misrepresentation was only carried out to be able to escape Haiti and avoid serious harm. The Applicant also submitted a declaration indicating that they are in a good faith marriage. Finally, the Applicant submitted a statement from their spouse. Their spouse indicated that the Applicant assists with everything in the house and with their daughter's school. The Applicant's spouse also noted that when they are sick the Applicant is the only person who cares for them. Finally, the declaration notes that the Applicant could be killed upon return to Haiti because the Applicant's spouse has enemies who are still in power.

After reviewing the record, the Applicant has not established that their spouse would experience extreme hardship upon separation if the Applicant were refused admission. While the Applicant and their spouse characterized the financial consequences of separation to the spouse as disastrous, they did not clearly outline how their spouse would be economically impacted such that it would rise to the level of extreme hardship. The Applicant also submitted tax paperwork with the adjustment application showing that their spouse is employed and contributing to the household income. While we acknowledge the family would suffer financial harm in the loss of the Applicant's current income, and the spouse may feel less able to afford schooling for their child, the Applicant has not shown that these consequences rise above the level of common hardship.

We also consider that the family would be separated, leaving the Applicant's spouse alone with their daughter and without a caretaker in the event of illness. While this would be unfortunate, we note that their daughter is an adult; the Applicant's departure would not require their spouse to take on extra childrearing responsibilities. The Applicant has not provided evidence to show that their spouse suffers from health problems or requires medical attention that would be difficult to receive in their absence.

Finally, we turn to the Applicant's claim of extreme hardship to their spouse upon separation because of the possible risk to the Applicant's life upon return to Haiti. First, we have taken into consideration that Haiti is currently experiencing significant political instability, violence, and societal upheaval. *See, e.g.*, Associated Press, UN: Delaying help to combat Haiti's gangs may impact region, https://apnews.com/article/haiti-gangs-violence-police-international-force-fb0afc55f505affa080062e7f0259a05 (last visited April 26, 2023); U.S. Department of State, Haiti Travel Advisory, https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/haiti-travel-advisory.html (last visited May 11, 2023). In addition to these general country conditions, the Applicant's spouse indicated that they have enemies in positions of power. However, insofar as the Applicant is asserting hardship to their spouse because the latter would be unable to visit them in Haiti, the Applicant and their spouse did not provide any statement indicating that the spouse would wish to visit the Applicant

were they to be separated. Furthermore, no specifics have been provided regarding the identities of these enemies, the circumstances that caused the Applicant's spouse to depart Haiti, or any specific harm the Applicant would fear in Haiti. Although we are cognizant of the level of current unrest in Haiti, the Applicant has not provided sufficient, probative testimony or other evidence to demonstrate that their life would be at risk if they returned to Haiti and that, as a result, separation would cause their U.S. citizen spouse to experience extreme hardship. *See Matter of Chawathe*, 25 I&N Dec. at 375-76 (stating that the burden of proof to establish eligibility rests with the applicant). The Applicant did not provide additional evidence of any purported extreme hardship on appeal.

III. CONCLUSION

After examining all evidence provided with the waiver application and all hardship factors in the aggregate, the Applicant has not demonstrated by a preponderance of the evidence that their spouse would suffer extreme hardship upon separation if the Applicant were refused admission. Because the Applicant has not demonstrated extreme hardship to a qualifying relative if they are denied admission, we need not consider whether they merit a section 212(i) waiver in the exercise of discretion.

ORDER: The appeal is dismissed.