U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26985572

Date: June 21, 2023

Appeal of Boston, Massachusetts Field Office Decision

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

The Applicant, a citizen of Brazil, 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), for misrepresentation of material facts. The U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The Director of the Boston, Massachusetts Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding the Applicant did not establish extreme hardship to his U.S. citizen spouse, his only qualifying relative. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant submits a brief asserting his eligibility based on the record.

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. There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident (LPR) spouse or parent of the noncitizen. Section 212(i) of the Act. If the noncitizen demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. 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) (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).

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/legal-resources/policy-memoranda. Demonstrating extreme hardship under both 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. In the present case, the record is unclear whether the Applicant's spouse would remain in the United States or relocate to Brazil if the Applicant's waiver application is denied. The Applicant must, therefore, 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 his inadmissibility, as described in the Director's decision on his waiver application, which we incorporate here. The record indicates that the Applicant's spouse was diagnosed with situational mixed anxiety and depressive disorder. On appeal, the Applicant furnishes an updated medical letter from December 2021 from a primary care physician stating the Applicant's spouse has "active Depression major, Anxiety, panic attacks since 2018 and recently grieving her mother's death." The updated medical letter states the spouse is on medication and not currently doing psychological counseling (as she has in the past). The record additionally indicates that the Applicant's spouse had a vaginal bleeding problem in 2017 which lasted for nine months and is now under control. In a statement, the Applicant's spouse expressed concern over helping to financially support her parents living in Brazil, her mother who had Alzheimer's and her father who was retired. On appeal, the Applicant noted that his spouse's parents are now deceased. While are sympathetic to the fact that his spouse is grieving, we note that her parents are no longer a source of financial stress, as previously indicated the spouse's statement in support of the waiver application, to support "a home care provider [for her parents], her [the mother's] prescriptions, and her doctor bills."

After reviewing the entire record, for the reasons set out below, we have determined that the Applicant has not demonstrated that his qualifying relative would experience extreme hardship if he were denied admission as an LPR. In their decision, the Director thoroughly discussed the Applicant's failure to demonstrate the hardships his wife would experience rose to the requisite level. Upon consideration of the entire record, including the evidence submitted and arguments made on appeal, we adopt and affirm the Director's ultimate determination with the comments below. See Matter of P. Singh, Attorney, 26 I&N Dec. 623, 624 (BIA 2015) (citing Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994)); see also Chen v. INS, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

We begin addressing a procedural issue the Applicant considers to be an error on the Director's part. The Applicant identifies a June 9, 2021, USCIS Policy Alert instructing officers to issue a request for evidence (RFE) or notice of intent to deny (NOID) before denying an application where there is a possibility the filing party can overcome a finding of ineligibility.

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) provides: "If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS." Therefore, the Director is not required to issue an RFE in every potentially deniable case. The regulation at 8 C.F.R. § 103.2(b)(8) does not require solicitation of further documentation, if the missing or inadequate evidence is included as initial evidence within the regulation governing the classification or the form instructions.

The policy alert the Applicant provides on appeal was incorporated into the USCIS Policy Manual at 1 USCIS Policy Manual, E.6, https://www.uscis.gov/policymanual. The USCIS Policy Manual does not support the Applicant's position that the Director was required to issue an RFE or a NOID on the waiver application. It states: "Generally, USCIS issues written notices in the form of an RFE or NOID to request missing initial or additional evidence from benefit requestors. However, USCIS has the discretion to deny a benefit request without issuing an RFE or NOID." 1 USCIS Policy Manual, supra, E.6(F). The term "generally" doesn't make the issuance of a notice mandatory and the USCIS Policy Manual provided the Director with the discretion to deny the waiver application without an RFE or NOID. So, while we acknowledge that the USCIS Policy Manual encourages agency officers to issue RFEs and NOIDs, it does not mandate it. The Director's decision not to issue such a notice was not in direct breach of USCIS policy as the Applicant contends on appeal.

Next, the Applicant's attorney asserts, without corroborating affidavit or evidence, that USCIS declined to accept additional evidence proffered at the Applicant's adjustment of status interview. The attorney states that the Applicant brought updated hardship evidence to the interview and asked the interviewer to take testimony regarding updated hardship. As a preliminary matter, the unsupported assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Laureano, 19 I&N Dec. 1 (BIA 1983); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

Additionally, and critically, the Applicant furnished a copy of the documents proffered to USCIS on appeal. These documents include a December 2021 letter from the Applicant's spouse's primary care physician confirming diagnosis for "Active Depression, Anxiety, panic attacks" and confirming the recent death of the Applicant's spouse's mother in 2021; records of treatment for the situational mixed anxiety and depressive disorder describing changing medicines due to unwanted side effects, copies of prescriptions; updated banking records; evidence of the Applicant's good moral character; a character letter from the Applicant's employer; and, updated criminal background checks showing no criminal history. On appeal, the Applicant also presented selected excerpts of country conditions reports on the impact of COVID-19 on the medical system in Brazil, the treatment of persons with disabilities confined to institutions, an August 2020 article on the Brazilian health system in crisis, an article about mental health access for children and adolescents, and an August 2020 article about

social-distancing during the COVID-19 pandemic. On de novo review, the proffered evidence does not persuade us to disturb the Director's decision. The updated medical and financial evidence is largely duplicative of evidence already in the record and considered by the Director. The articles discussing medical issues related to Brazil's medical system and the disabled, children, and adolescents living in the country are not relevant to the Applicant's spouse and hardship upon separation, as she would remain in the U.S. and under the U.S. health care system. The remaining evidence submitted is not relevant to a determination of whether the Applicant has met his burden of establishing, by a preponderance of the evidence, that his spouse would suffer extreme hardship upon separation.

Although we are sympathetic to the Applicant and his spouse's circumstances, we conclude that if the Applicant's spouse remains in the United States without the Applicant, the record is insufficient to show that her hardship would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. While acknowledging the Applicant's spouse's diagnosis with and treatment for anxiety and depression, the record does not show that she has any physical or mental health issues that affect her ability to work or carry out other activities and she works as a housecleaner. Similarly, the Applicant's spouse's nine months of vaginal bleeding resolved in 2018. Considering all of the evidence in its totality, the record is insufficient to show that the Applicant's spouse's claimed financial, mental, and physical hardships would be unique or atypical, rising to the level of extreme hardship, if she remains in the United States while the Applicant returns to live abroad due to his inadmissibility.

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 to Brazil. As the Applicant has not established extreme hardship to his spouse in the event of separation, we cannot conclude he has met this requirement. Thus, we need not reach the question whether relocation would cause extreme hardship on the qualifying relative, and we reserve that issue. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); 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 an applicant is otherwise ineligible).

Because the Applicant has not demonstrated extreme hardship to a qualifying relative if he is denied admission, we need not consider whether he merits a waiver in the exercise of discretion. Id. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.