U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24993292

Date: JUN. 21, 2023

Appeal of Queens, New York Field Office Decision

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

The Applicant, a native and citizen of China currently residing in the United States, 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. *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.

The Director of the Queens, New York Field Office denied the application, concluding that the Applicant did not establish extreme hardship to her qualifying relative, her U.S. citizen spouse, as required. 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 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 discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident 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) (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. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda. An applicant may submit evidence demonstrating which of the scenarios would result from a denial of admission and may establish extreme hardship to one or more qualifying relatives by showing that either relocation or separation would result in extreme hardship. *See id.* 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, the Applicant has not stated whether she and her spouse intend to separate or relocate to China if the waiver application is denied. Therefore, the Applicant must establish that her U.S. citizen spouse would experience extreme hardship both if he remained in the United States while the Applicant relocated to China and if they relocated to China together.

II. ANALYSIS

The Applicant entered the United States in 2014 as a non-immigrant visitor and married D-N-L-[1], her qualifying U.S. citizen spouse, in 2015. The Applicant does not contest her inadmissibility on appeal and admits to providing false information to the Department of State on her non-immigrant visa application. In her initial request for a waiver, the Applicant provided a brief, an affidavit from D-N-L-, and three psychological evaluations dated December 2021, January 2022, and March 2022. The Applicant stated that her U.S. citizen spouse would suffer extreme emotional and financial hardship if she were denied admission to the United States. The Director determined that the evidence did not establish that the Applicant's qualifying relative would experience hardship that is over and above that normally experienced as a result of inadmissibility.

On appeal, the Applicant states that the Director did not fully consider the psychological evaluation from March 2022 and the medical conditions of the Applicant's spouse when evaluating extreme hardship. In addition, the Applicant submits tax returns from 2017 through 2022 as evidence that her spouse would suffer extreme financial hardship at the loss of her wages. Upon de novo review, we agree with the Director that the Applicant has not met her burden of proof in establishing extreme hardship to her qualifying U.S. citizen spouse.

In terms of financial hardship upon separation, the Applicant states that she is the primary wage earner for the family and that her spouse would be unable to support himself on his salary alone. To support her claim, the Applicant submits tax returns from 2017 through 2021. According to the 2020 and 2021 tax returns, the Applicant was responsible for roughly half of the household income. In 2019, the Applicant had ten thousand dollars in income while the Applicant's spouse made over thirty thousand

[1] We use initials to protect the privacy of individuals.

dollars in income. While the tax returns indicate that both the Applicant and her spouse contribute to the household finances, loss of the Applicant's income alone is not sufficient to establish that the Applicant's spouse would experience extreme financial hardship. Moreover, the Applicant has not addressed whether her spouse has any other source of income available, such as social security, retirement accounts, or other forms of savings. Finally, the Applicant has not provided information regarding the couple's current financial obligations such as mortgage, rent, debt, and monthly bills. As such, the record does not sufficiently establish the current financial circumstances of the Applicant's spouse. We acknowledge that the spouse's finances may be negatively impacted by the Applicant's relocation to China, however, the record does not establish that D-N-L- would be unable to provide for himself or meet his current financial obligations resulting in extreme financial hardship if the Applicant were denied admission to the United States.

As to medical and emotional hardship upon separation, the Applicant has not provided any new information or evidence on appeal in support of her spouse's emotional hardship or ongoing medical conditions. In his affidavit to the Director, the Applicant's spouse states that he has strong and deep affection for his spouse who has become a source of comfort and security since their relationship began. He also states that he has nightmares regarding his spouse's immigration status and frequently feels anxious about her potential removal. The December 2021 and January 2022 psychological evaluations provide a summary of D-L-N-'s symptoms of anxiety, including a diagnosis of an unspecified anxiety disorder, but does not discuss the underlying cause of the anxiety. The March 2022 psychological evaluation provides additional details regarding D-L-N-'s mental health including discussion of his mental health history, reported physical symptoms including fatigue and muscle tension, and indicates that his spouse is a crucial source of support. The report provides a diagnosis of Major Depressive Disorder and Chronic Moderately Severe with High Distress Anxiety and proposes continued psychotherapy and medication as treatment. It further provides that separation from the Applicant would result in a breakdown of the marriage and corresponding mental health effects. We acknowledge that the Applicant's spouse may experience emotional hardship as a result of separation from his spouse, however, the evidence in the record does not sufficiently establish that the financial, medical, and emotional effects of separation from the Applicant would be more serious than the type of hardship normally suffered when one is faced with the prospect of separation from one's spouse. *See Matter of Pilch*, 21 I&N Dec. at 630-31. The March 2022 psychological evaluation also describes the prospective hardship to the Applicant's daughter if the Applicant were denied admission to the United States. Hardship to non-qualifying family members, like the Applicant's LPR daughter, may only be considered in as far as it effects the qualifying relative, in this case, the Applicant's U.S. citizen spouse. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002). How the hardship of the Applicant's daughter would affect the Applicant's spouse is not discussed in the psychological evaluation or otherwise discussed in detail in the record.

The affidavit from the Applicant's spouse and the March 2022 psychological evaluation discuss the poor condition of mental health services in China and their effect on D-N-L-'s mental health if he were to relocate to China. While we acknowledge the Applicant's claims of poor mental health facilities in China, neither the Applicant nor her spouse have indicated that they intend to relocate to China if the waiver is denied. Since the Applicant has not made an affirmative statement regarding relocation or separation, she must establish extreme hardship to her spouse under both separation and relocation as described in agency policy. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda. Although we are sympathetic to the family'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 his hardship would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Because the Applicant has not demonstrated extreme hardship to her qualifying relative, her U.S. Citizen spouse, upon separation, we need not consider whether she has established extreme hardship upon relocation or whether she merits a waiver in the exercise of discretion and, therefore, reserve the issues. *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). The waiver application will remain denied.

ORDER: The appeal is dismissed.