U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25986600

Date: JUN. 22, 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 or relatives.

The Director of the Queens, New York Field Office denied the application, concluding that the Applicant had not established extreme hardship to his LPR parents. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or 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 U.S. Citizenship and Immigration Services 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/policymanual. Demonstrating 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. *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.* Here, the Applicant states that his LPR parents, the qualifying relatives in this case, will suffer extreme hardship if they were to be separated and if they were to relocate to China. The Applicant must therefore establish that if he is denied admission, his parents would experience extreme hardship upon both relocation and separation.

Upon review of the record in its totality, we will remand the matter to the Director for further review and issuance of a new decision. On appeal, the Applicant contends that the Director did not sufficiently explain why the submitted evidence did not establish extreme hardship to the Applicant's LPR parents and that the Director did not respond to the Applicant's argument that he is not inadmissible for fraud and misrepresentation or provide sufficient analysis of the inadmissibility finding. The Applicant further highlights that the Director's decision, on multiple occasions, indicates that he was granted withholding of removal by an Immigration Judge and that, as a result, he would not in fact be removed to his country of origin—a factor relevant to the extreme hardship determination. The Applicant asserts, however, that he "does **not** have withholding of removal" and removal "is thus a real and potential result from USCIS's erroneous denial of the . . . application."

The regulation at 8 C.F.R. § 103.3(a)(1)(i) states that when denying an application or petition, the Director shall explain in writing the specific reasons for denial. In the decision denying the application, the Director provided that the Applicant "made a material misrepresentation to gain a benefit under the [Act] several times" and provided minimal factual support for the determination that he was inadmissible under section 212(a)(6)(C)(i) of the Act, but did not otherwise analyze the specifics of the misrepresentations, explain why they were material, or expressly respond to the Applicant's arguments regarding his admissibility. Moreover, the Director acknowledged hardship to the Applicant's LPR parents but concluded, without reference to or summary of the specific evidence submitted or analysis as to why that evidence was insufficient, that the evidence failed to demonstrate that the Applicant's parents would suffer extreme hardship if he were removed from the United States. When denying an application, the Director must fully explain the reasons for denial to allow the Applicant a fair opportunity to contest the decision and provide the Administrative Appeals Office (AAO) an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). Here, the Director did not provide a meaningful analysis of the Applicant's inadmissibility or sufficiently explain why the evidence in

the record did not demonstrate extreme hardship to the Applicant's qualifying relatives should the application be denied.

Additionally, the Director's decision states that the Applicant has been granted withholding of removal and, therefore, denial of the application would not result in his removal from the United States or separation from his parents, thereby preventing the hardship to the Applicant's qualifying relatives. However, a review of the record indicates that the Applicant's 2004 grant of withholding of removal was vacated by the Board of Immigration Appeals (Board) in 2006 and that vacatur was later upheld in a 2007 decision from the Board which remains the last decision in the proceedings. Therefore, the Director's conclusion that the Applicant has been granted withholding of removal was in error and, as argued by the Applicant on appeal, he may be subject to removal upon denial of the waiver application and, thereby, separation from his parents.

Accordingly, we will withdraw the Director's decision and remand the matter for the Director to consider, in the first instance, all relevant evidence, including the new evidence submitted on appeal, and issue a new decision addressing the Applicant's inadmissibility, statutory eligibility for a waiver of that inadmissibility, and eligibility for the waiver as a matter of discretion.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.