U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23526846

Date: MAR. 30, 2023

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant 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 fraud or willful misrepresentation.

The Director of the Los Angeles, California Field Office denied the application, concluding that the record did not establish that the Applicant's qualifying relative would experience extreme hardship if he were denied admission to the United States. 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. 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. 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. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda. In the present case, neither the Applicant or his qualifying relative, his U.S. citizen spouse, submitted a statement of intent to remain in the United States or relocate to the Republic of Korea (Korea) 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 is a citizen and national of Korea who entered the United States as a student in August 2006. More recently the Applicant entered the United States using the visa waiver program in 2016. The Applicant married A-S-[1] in [redacted] 2016. The Applicant filed the current waiver in connection with an application for adjustment of status in December 2021 after a determination that he was inadmissible under section 212(a)(6)(C)(i) of the Act.[2] The Applicant does not contest, and the record supports, the inadmissibility finding of the Director which is incorporated here. The Director denied the waiver application stating that the Applicant did not meet his burden of proof in establishing that his U.S. citizen spouse would suffer extreme hardship if he were denied admission. Specifically, the Director determined that the Applicant did not provide sufficient evidence that the emotional, financial, and medical considerations of his spouse were over and above those of any person in a similar situation.

On appeal, the Applicant provides a brief, tax documents for himself, his spouse, and his spouse's business, and evidence of financial obligations such as a mortgage statement. In the brief provided on appeal, the Applicant claims that he must only show hardship if he and his spouse were separated from one another, and that the Director erred by focusing attention on the lack of evidence related to relocation. As stated above, neither the Applicant or his spouse made affirmative statements regarding their intent to relocate abroad or separate if the waiver application is denied. As such, the Director correctly evaluated the evidence related to both relocation and separation. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda.

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

[2] The Applicant obtained an F1 student visa based on attendance at the [redacted] College of Forensic Studies. A federal investigation into the business discovered that the owners had engaged in a pay-to-stay scheme for F1 visa holders and that the school was not a legitimate educational institution. The owners of the school were found guilty of 21 counts of visa fraud and conspiracy to commit fraud.

The Applicant also claims on appeal that the Director failed to consider all the relevant hardship factors in the aggregate and minimized the hardship the Applicant's spouse would face when analyzing the evidence. To the extent that the Director appeared to generalize living conditions in Korea and minimize A-S-'s claim of extreme hardship, that portion of the decision is withdrawn. Nonetheless, we find through our own independent analysis of the evidence, that the Applicant has not met his burden, by a preponderance of the evidence, that his spouse would suffer extreme hardship upon separation.

Although we are sympathetic to the family's circumstances, we conclude that the record is insufficient to show that A-S-'s hardship would rise beyond the common results of removal or inadmissibility to the level of extreme hardship if she remains in the United States without the Applicant. With the initial application, the Applicant provided a written statement claiming that he provides emotional support when his spouse is dealing with the stress of running her own business and that he does not want his family torn apart. A-S- provided a statement in which she claims that she would suffer extreme emotional distress if her husband were removed from the United States. She states that her husband is her emotional support and helps make decisions related to her business. She further states that her family are all U.S. citizens except for her mother who remains a lawful permanent resident. To support the claim of emotional and medical hardship the Applicant submitted a psychological evaluation for A-S-. The evaluator diagnosed A-S- with adjustment disorder with anxiety and growing signs of depressive disorder. The evaluator attributed these diagnoses to the growing uncertainty of her spouse's immigration status. The evaluator did not, however, further describe any diagnoses or conditions that would rise to the level of extreme hardship. Likewise, the Applicant did not submit any additional evidence on appeal to support the claim that A-S- has any physical or mental health issues that affect her ability to work or carry out other activities, or that she requires the Applicant's assistance as a result. In addition, A-S- has established that her family is lawfully residing in the United States and there is no indication that her family members are unable or unwilling to assist her, as needed.

In addition to the medical and emotional hardship, A-S- claims that she would suffer financial hardship if separated from her spouse because they rely on his income to help support them as a family. In support of this statement the Applicant provided tax records for himself, his spouse and his spouse's business. The W-2s for the Applicant show that in 2020 and 2021 he earned $10,748 and $27,174 respectively. Meanwhile, the tax filings for the couple show income of $228,223 and $446,967 in each of those tax years. The tax records and wage information the Applicant provided indicate that A-S- is the primary income earner for the couple. While the tax documents provide a summary view of the Applicant's finances, neither the Applicant nor his spouse provided a detailed explanation of their income or financial situation beyond stating that they have a business loan and other financial obligations. Without additional detail regarding the Applicant's role in maintaining the couple's financial health, the record is insufficient to establish that loss of the Applicant's wages would be an extreme financial hardship for his spouse.

The Applicant has not established that his spouse faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is denied entry into the United States. The hardships the Applicant does enumerate do not rise to the level of "extreme" as contemplated by statute and case law. We are sympathetic to the family's circumstances, but considering all the evidence in its totality, the Applicant has not provided sufficient evidence to show

that the aggregated financial and emotional hardships of separation would be unusual or atypical to the extent that they rise to the level of extreme hardship.

The remaining medical, social, cultural, and financial hardship claims of the Applicant relate exclusively to A-S- moving with him to Korea upon his removal. As noted above, absent an affirmative declaration of intent to relocate or separate, the Applicant must establish that denial of the waiver application would result in extreme hardship to his spouse both upon separation and relocation to Korea. As the Applicant has not established extreme hardship to his spouse in the event of separation, we cannot conclude he has met this requirement and need not reach a determination on whether his spouse would experience extreme hardship upon relocation. 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. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.