U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 28398292

Date: NOV. 6, 2023

Appeal of Denver, Colorado Field Office Decision

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

The Applicant, a native and citizen of Mexico 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 qualifying relatives.

The Director of the Denver, Colorado Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant did not establish his U.S. citizen spouse, a qualifying relative, would experience extreme hardship upon his removal or their relocation to Mexico. Further, the Director concluded that the Applicant did not merit a favorable exercise of discretion as the unfavorable factors outweighed his favorable factors. 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

Any foreign national 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 U.S. citizen or LPR spouse or parent of the foreign national. If the foreign national demonstrates the existence of the required hardship, then he or she must also show that USCIS should favorably exercise its discretion and grant the waiver. 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).

## II. ANALYSIS

The Applicant entered the United States with a Border Crossing Card and at secondary inspection he informed U.S. Citizenship and Border Patrol (CBP) that he entered the United States to visit his brother for one week. During his adjustment interview, the Applicant testified that his intent at entry was to look for work to send money back home to Mexico. USCIS determined the Applicant to be inadmissible for fraud or misrepresentation and issued a Notice of Intent to Deny (NOID) at which time the Applicant filed the waiver application. The Director denied the waiver application.

In that decision, the Director determined that while the Applicant is the primary financial provider for the family, his loss of income would not go beyond the common hardships experienced with removal and that the Applicant would be able to find similar work in Mexico upon relocation. Regarding the spouse's psychological diagnosis, the Director acknowledged she suffers from Adjustment Disorder with Mixed Anxiety and Depressed Mood, chronic type, but did not find evidence of treatments she receives in the United States or that the conditions would worsen if she were to relocate to Mexico. The couple's 4-year-old son is not a qualifying relative for hardship purposes, but the Director considered the effect the Applicant's inadmissibility would have on his spouse in caring for their child and concluded there was insufficient evidence to indicate their son could not relocate to Mexico or that his spouse could not care for him in the United States upon the Applicant's departure.

On appeal, the Applicant asserts the Director erred in determining he is inadmissible and that his U.S. citizen spouse would not experience extreme hardship if he were denied admission to the United States and upon relocation to Mexico. In his affidavit submitted on appeal, the Applicant contests the inadmissibility finding explaining that he remained in the United States only after his spouse begged him to stay. However, the Applicant does not deny telling USCIS that he entered the United States to work and send money back to Mexico. As such, the Applicant has not established that the Director erred in determining he is inadmissible under section 212(a)(6)(c)(i) of the Act.

Next, the Applicant argues that he has demonstrated extreme hardship to his U.S. citizen spouse and that he grants a waiver as a matter of discretion. He asserts that his spouse's psychological conditions, the loss of his income, the disruption in childcare to their U.S. citizen son and the emotional toll of either relocating or remaining in the United States without him would amount to extreme hardship to his spouse.

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 (providing guidance on the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both 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.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Gonzalez Recinas*, 23 I&N Dec. 467 (BIA 2002)). 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's spouse did not specify if she would remain in the United States or relocate to Mexico, and thus the Applicant must establish extreme hardship to his spouse upon both relocation and separation. Upon de novo review, the Applicant has not established by a preponderance of the evidence that his spouse would endure extreme hardship upon relocation to Mexico.

In regard to hardship, the record contains affidavits from the Applicant and his spouse, identity documents, his spouse's naturalization certificate and their marriage certificate, a birth certificate for their child, a psychological evaluation, paystubs, bills and expenses, three years of tax returns, a medical record for the Applicant's mother-in-law, proof of legal status for the spouse's family, letters of support from family and the community, and country conditions documentation for Mexico.

The Applicant has not stated where he would live in Mexico if he were not permitted to remain in the United States, but he did submit country conditions reports detailing violence and crime. He and his spouse were born in [redacted] Mexico and his parents continue to reside there. Although we acknowledge that this is a region for which there is a Department of State (DOS) travel advisory because of crime and kidnapping, neither the Applicant nor his spouse have asserted they were harmed or threatened in [redacted] or that they would be targeted in the future, and there is no evidence the Applicant's parents have been harmed in [redacted] Further, the Applicant and spouse are both native Spanish speakers who lived in Mexico for most of their lives and possess job skills that are transferrable. Considering the foregoing, and without more specific, detailed evidence, the Applicant has not established that the country conditions in Mexico would cause his spouse to endure extreme hardship if she relocated there.

In addition, the Applicant's spouse suffers from chronic anxiety and depression. The record contains a psychological evaluation which states that "the spouse's medical condition is a psychological response to an identified stressor that leads to the development of clinically significant emotional or behavioral symptoms, and that her symptoms of anxiety and depressed mood have been present for longer than three months, classifying the distress as chronic." We reviewed the country conditions report documenting the underfunded health care system in Mexico, and acknowledge deficiencies in Mexico's health care as compared to the United States. However, the report does not contain specific information regarding mental health treatment in Mexico and while the psychologist speculates that the spouse's mental health may deteriorate, without more documentation of Mexico's mental health care and treatment availability, we are not able to assess the impact relocating would have on the Applicant's spouse.

The immediate family of the Applicant's spouse, including parents and siblings, are U.S. citizens and permanent residents residing in the United States. In the spouse's affidavit, she explains they are close knit and that being separated from them would be devastating. Statements from other family members also indicate the Applicant's spouse is close to her family in the United States and that her departure would be difficult for her. The appeal contains letters attesting to the Applicant's character and connections to the community. However, the loss of close family and community ties are a common result of removal, and without more are not sufficient to establish extreme hardship.

In the end, the Applicant has not established by a preponderance of the evidence that his spouse's hardships, considered individually and cumulatively, would rise to the level of extreme hardship upon relocation.[1] The waiver application will remain denied.

**ORDER:** The appeal is dismissed.

[1] Because this determination is dispositive of the Applicant's appeal, we will not address and hereby reserve the issues of whether the Applicant has established hardship upon separation and whether he merits a favorable exercise of discretion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).