U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26956776

Date: NOV. 8, 2023

Appeal of Los Angeles, California Field Office Decision

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

The Applicant, a native and citizen of Korea 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 Los Angeles, California Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant did not establish that his qualifying relative, his LPR spouse, would suffer extreme hardship upon his removal. 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 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. To establish eligibility for a waiver of this inadmissibility the noncitizen must demonstrate, as a threshold requirement, that denial of admission will result in extreme hardship to their U.S. citizen or LPR spouse, or parent. 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 used a fraudulent I-94 entry number and entry date when he applied for an extension of status on the Form I-539, Application to Extend/Change Nonimmigrant Status. He also provided false testimony to USCIS on his first adjustment of status application in confirming he attended the [redacted] College when he had not attended this school. 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 concluding that he had not established his LPR spouse would suffer extreme hardship if the Applicant were not admitted to the United States.

In the denial, the Director determined the Applicant's had not submitted evidence to demonstrate the severity of his spouse's medical conditions and that they are not controlled by her doctor. The Applicant's spouse suffers from dyslipidemia, polycystic ovarian syndrome, prediabetes, endometritis, and vitamin D deficiency. The Director further determined that the record lacked information regarding financial hardship and that the Applicant's claimed hardships to his wife upon separation or relocation and the resulting emotional challenges were common results of removal and did not rise to the level of extreme hardship.

On appeal the Applicant contends the Director erred in not considering the totality of the hardships. The Applicant asserts that his spouse's medical illnesses are ongoing and directly tied to her vulnerable mental state, and that a deteriorating mental state will aggravate the physical ailments upon relocation or separation. Further, the Applicant challenges the Director's determination on the financial difficulties and argues he has provided sufficient evidence to demonstrate that her health conditions will make working difficult thereby exacerbating her financial challenges. Lastly, the Applicant asserts the Director did not consider as a hardship the spouses impending service in the Army reserve.[1]

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*

[1] To the extent the Applicant cites to prior non-precedent decisions issued by the AAO, we note that such decisions are not binding on future USCIS adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

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 Korea, and thus the Applicant must establish extreme hardship to his spouse upon both relocation and separation. Upon de novo review, we analyze hardship to the Applicant's spouse upon separation and determine the Applicant has not established by a preponderance of the evidence that his spouse would endure extreme hardship if the waiver application were denied.

The record contains a letter from the Applicant's spouse, information from her enlistment in the Army reserves, letters from University [redacted] regarding disability accommodations, a letter from the spouse's physician and psychologist, letters from family and members of their church, country condition documentation on Korea regarding treatment of expats and ageism and licensing for a dental technician, and a copy of employment verification for the Applicant.

Regarding the financial difficulties the Applicant's spouse will incur upon removal, the record does not contain information regarding current expenses or income projection, particularly considering the changes to the spouse's employment with her military service and recent graduation from a Ph.D. program in linguistics from the University [redacted] We acknowledge that the loss of the Applicant's income, the cost of flights to Korea, and the challenge to work while managing medical issues would all be difficult. However, without more information on current expenses and projected income, the Applicant has not established the severity of the financial hardship to his spouse.

The Applicant's spouse suffers from anxiety and was placed in the disability program while studying for her Ph.D. The information from the psychologist indicates the spouse has experienced heightened anxiety because of immigration concerns. The letter from her physician indicates she suffers from polycystic ovarian syndrome, pre-diabetes, and dyslipidemia. The physician notes that the polycystic ovarian syndrome is worsened by stress, particularly the stress of the immigration process which she has been going through since 2013. We recognize the emotional strain that separation from a loved one may cause, however, the Applicant has not established that his spouse would endure hardship exceeding that which is usual or expected upon separation.

According to the documents submitted, the Applicant's spouse enlisted in the Army reserves and recently began training. USCIS policy indicates that military service is a particularly significant factor in the hardship equation, noting that "if a qualifying relative is an Active Duty member of any branch of the U.S. armed forces, or is an individual in the Selected Reserve of the Ready Reserve, denial of an applicant's admission often causes psychological and emotional harm that significantly exacerbates the stresses, anxieties and other hardships inherent in military service by a qualifying relative." *See generally* 5 *USCIS Policy Manual* E.3, https://www.uscis.gov/policy-manual/volume-9-part-b-chapter-5. Here, the record lacks evidence to indicate the spouse has successfully completed training, whether she is in the selected reserve, or whether she is in the process of becoming an active-duty officer as intended. Further, other than general considerations, the Applicant has not provided documentation on how his removal would affect his spouse's ability to serve in the military or cause her to endure hardship.

III. CONCLUSION

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 separation.[2] The waiver application will remain denied.

ORDER: The appeal is dismissed.

[2] The letters submitted from members of the Applicant's church, family, and employer demonstrate the Applicant has close ties with his family, is established in the community, and is doing well in his career. However, these discretionary considerations are not pertinent because the Applicant has not established extreme hardship to his qualifying relative.