U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28521656

Date: NOV. 17, 2023

Appeal of Mount Laurel, New Jersey Field Office Decision

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

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). The Director of the Mount Laurel, New Jersey Field Office denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, after concluding she was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud and misrepresentation and that the record did not establish that her U.S. citizen spouse, the qualifying relative, would suffer extreme hardship if the Applicant was removed from the United States as required for the waiver, or that she warranted the waiver as an exercise of discretion. 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

Section 212(a)(6)(C)(i) of the Act renders inadmissible 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, admission into the United States, or other benefit provided under the Act. Section 212(i) of the Act provides a waiver of the above ground of inadmissibility if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent of the noncitizen. If a noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *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). 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).

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)). 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, because the record does not clearly identify whether the spouse will remain in the United States or relocate, the Applicant must establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

II. ANALYSIS

The Applicant does not contest, and the record supports, the Director's determination of inadmissibility under section 212(a)(6)(C)(i) of the Act and therefore she must establish that her U.S. citizen spouse would suffer extreme hardship if she were denied admission.[1] As evidence of extreme hardship in support of her Form I-601, the Applicant submitted a statement from her spouse wherein he stated that he would be lost without her, that the Applicant contributes to the household financially and that without her, he would not know how to parent their children or have anyone to cook, clean, do laundry, or care for their cats. The Applicant also submitted statements dated in 2020 from her three adult children who described their bond with the Applicant and the support she provides to the family. One of the children advised that the Applicant suffered from bipolar manic depression and would not be able to receive the treatment she needs in Turkey. Additionally, the Applicant provided letters from a psychiatrist indicating she was being treated for Major Depressive Disorder and Panic Disorder since 2018, and that her spouse met the criteria for Major Depressive Disorder after an evaluation conducted in 2020, as well as two medical records from 2018 reflecting the Applicant was being treated for depression. Finally, the Applicant provided financial documents that included her spouse's 2019 Form W-2; jointly filed Forms 1040A, U.S. Individual Tax Return, and related tax documents from 2016 and 2017; utility statements from 2020; a mortgage statement from 2019; an insurance policy statement from 2019; credit card statements from 2020; as well as country conditions information for Turkey and letters of support from three friends.

On appeal the Applicant asserts her spouse would suffer extreme hardship upon separation or relocation, and that she warrants a waiver as a matter of discretion. She highlights that her spouse was diagnosed with Major Depressive Disorder and that he would be less likely to respond to treatment if they are separated. She also claims separation would affect her family's emotional health and cause

[1] The Applicant conceded and the record shows that she provided false information on an application to obtain a nonimmigrant visa to enter the United States.

financial hardship. In support of her appeal, the Applicant resubmits the psychiatrist's letter related to her husband that was identified above.

After reviewing the evidence submitted with the Form I-601 and on appeal, the Applicant has not established the requisite extreme hardship to her spouse upon separation. The Applicant is 47 years old and first married her spouse in 1996. They have three children together who are now aged 25, 23, and 22 years, respectively. The couple separated when her spouse moved to the United States in 2001 and were divorced in 2008 but remarried in 2013. The Applicant moved to the United States in 2011. During their separation, the spouse remarried a U.S. citizen, obtained lawful permanent residence through that marriage and subsequently naturalized, and then divorced in 2012.

The Applicant's spouse has described the difficulties he would experience if he were separated from the Applicant, including with finances, supporting their children, and completing chores. While the Applicant has provided tax records and some documentary evidence of their expenses, the record is insufficient, either alone or cumulatively, to establish that the economic detriment the spouse may suffer if they remained separated would rise to the level of extreme hardship. In this regard, the record shows the spouse is employed and that his three adult children reside in the United States and does not reflect that they would be unable to provide the financial support the spouse needs in the Applicant's absence. Additionally, while we acknowledge the Applicant provides support to her children, she has not established how or why her adult children require her financial support or how any decrease in support to her children caused by her absence would cause hardship to her spouse. *See Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002) (hardship to the applicant or others can be considered only insofar as it results in hardship to a qualifying relative).

As stated above, the Applicant has also raised concerns regarding her spouse's mental health. The spouse's psychiatrist stated that he suffered from symptoms of Major Depressive Disorder that started in 2019 and that he would be less likely to respond to treatment if he was separated from his wife. The psychiatrist also provided that despite having no problems maintaining employment, the spouse feared his work performance could diminish and eventually cause him to lose his job as result of his condition. We recognize these fears, however, the record shows the spouse and Applicant were separated for a number of years and they do not assert that the spouse suffered emotional hardship as a result. Additionally, neither the spouse in his statement nor the psychiatrist's letter and remaining documentation sufficiently clarifies the nature and severity of his condition, whether further treatment was sought or is required, how the condition affects his daily activities or employment, or to what degree he would be dependent on the Applicant as a result of the condition or any related symptoms. We also acknowledge the Applicant's evidence that she met the criteria for Major Depressive Disorder and Panic Disorder in 2018 and that one of the Applicant's children claims the Applicant suffers from bipolar manic depression. However, the record does not address how such condition affects the spouse or to what degree the diagnosis constitutes a hardship to him, nor does it establish that any necessary treatment would be unavailable in Turkey.

When considering the above factors in the aggregate, the Applicant has not established by a preponderance of the evidence that the hardship her spouse would face as a result of separation rises to the level of extreme hardship. As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to her spouse both upon separation and relocation. As the Applicant has not established extreme hardship to her spouse in the event of separation, she has

not met this requirement. Because the Applicant has not demonstrated extreme hardship to a qualifying relative if she is denied admission, we need not consider and reserve the arguments on appeal on whether she merits a waiver in the exercise of discretion. *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).[2]

As the Applicant has not established the requisite extreme hardship to a qualifying relative, she has not established eligibility for a waiver of inadmissibility under section 212(i) of the Act.

ORDER: The appeal is dismissed.

[2] We note that the Applicant also claims that USCIS was erroneously attempting to revoke the underlying approved Form I-130, Petition for Alien Relative, filed by the Applicant's spouse on her behalf. The Applicant is mistaken. A review of the record indicates that the Director addressed various negative factors arising in the Applicant's and her spouse's immigration history as they relate to hardship factors such as separation and whether the waiver was warranted as a matter of discretion, which are requirements for the waiver. *See* Section 212(i) of the Act.