U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28454766

Date: NOV. 20, 2023

Appeal of New York, New York Field Office Decision

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

The Director of the New York, New York Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), to waive the Applicant's inadmissibility, concluding that she had not established extreme hardship to her U.S. citizen spouse as required to demonstrate eligibility for a discretionary waiver under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). Furthermore, the Director denied the waiver as a matter of discretion. On appeal, the Applicant asserts her eligibility for the waiver and that she warrants the waiver as a matter of discretion.

The Applicant bears the burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). The matter is now before us on appeal. 8 C.F.R. § 103.3. We review the questions in this matter de novo. See Matter *of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

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, 8 U.S.C. § 1182(a)(6)(C)(i). 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. If the 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) (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 generally 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda. Demonstrating extreme hardship under both 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. In the present case, the record is unclear whether the Applicant's spouse would remain in the United States or relocate to China if the Applicant's waiver application is denied. The Applicant must, therefore, establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

ANALYSIS

The record establishes that the Applicant is a citizen of China. The Director determined the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact, and the Applicant, who is seeking adjustment of status, therefore filed this Form I-601 to waive her inadmissibility. The Director sent a request for additional evidence requesting the Applicant submit a waiver application and related supplemental evidence. The Applicant responded to the request for evidence with 2021 financial documentation but failed to submit a waiver application. Therefore, USCIS deemed the Applicant's adjustment application abandoned, and denied it.

Subsequently, the Applicant applied to reopen the adjustment application, then submitted a waiver application together with statements from the Applicant and her husband, and the Applicant's father-in-law's medical and psychiatric documentation. Although the Applicant's spouse's statement said that he suffered from depression and anxiety that was exacerbated since finding out his wife was found inadmissible, no medical documentation was provided supporting the Applicant's spouse's condition. In denying the Form I-601, the Director determined that the Applicant was not eligible for a waiver under section 212(i) of the Act because she had not established extreme hardship to her U.S. citizen spouse and that the Applicant did not meet her burden of demonstrating that she warranted a waiver as a matter of discretion.

On appeal, the Applicant does not contest the inadmissibility finding. The Applicant submits a brief contending that she established eligibility for the waiver based on extreme hardship to her spouse and that the Director failed to consider all the hardship to her qualifying relative. The Applicant's brief does not point out any material errors in the Director's decision, but rather briefly restates the facts in the record before the Director and asks that we reconsider it with humanitarian concerns and family unity in mind, noting that the Applicant's parents "are currently waiting for political asylum" and it

has been 8 years since the Applicant and her parents entered the United States.[1] The Applicant disagrees with the Director's weighing of the hardship in the established record.

In addition to the brief on appeal, the Applicant submits her spouse's medical records, all from the same psychiatrist, dated February 2023, February 2016, and April, June, July, September, October, November, and December 2015. The records show a history of generalized anxiety disorder treated with medication going back to 2015. The most recent medical report diagnoses generalized anxiety disorder and prescribes a 30-day supply, no refills, of lexapro 20 mg., trazodone 50mg., Vitamin D, and clonazepam. The report states:

> [The Applicant's spouse] describes generalized anxiety and worry about events and activities. The source of the anxiety varies but the anxiety is present most days and he finds it difficult to control worry.
>
> Problem Pertinent Review of Symptoms/Associated Signs and Symptoms: He convincingly denied symptoms of depression. He specifically denies manic symptoms. He reports no hallucinations, delusions or other symptoms of psychotic process.
>
> PAST PSYCHIATRIC HISTORY:
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> As far as can be determined [the Applicant's spouse's] psychiatric history is entirely negative. There have been no psychiatric hospitalizations, no prior psychiatric treatment, and no history of assaultive or suicidal behavior. There is no history of depressions, anxiety attacks, or other common psychiatric symptoms. No psychotropic medications have ever been taken. There is no history of non compliance (sic) with medication or treatment.

Upon de novo consideration of the entire record, including the arguments and new evidence presented on appeal, we adopt and affirm the Director's ultimate determination with the comments below. See Matter of P. Singh, Attorney, 26 I&N Dec. 623, 624 (BIA 2015) (citing Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994)); see also Arango-Aradondo v. INS, 13 F.3d 610, 613 (2d Cir. 1994)("We join our sister circuits in upholding a summary affirmance by the BIA when the immigration judge's decision below contains sufficient reasoning and evidence to enable us to determine that the requisite factors were considered.").

We acknowledge the assertions about the Director's weighing of the hardship factors and the new evidence of the Applicant's spouse's treatment for generalized anxiety. We note that the Applicant's spouse's generalized anxiety has been controlled with medication since 2015, years prior to his September 2020 marriage to the Applicant, and the Applicant has not shown that her spouse's mental health status will elevate his hardship to an extreme level should he become separated from her or relocate to China. Accordingly, the record does not support a determination of extreme hardship.

The Applicant's spouse still has not clarified whether he intends to relocate or separate and, as the Director articulated, the Applicant has not met her burden of establishing extreme hardship upon

[1] We note that an asylum application is also pending for the Applicant, which was received by the Vermont Service Center in August 2015.

separation. Because extreme hardship upon separation has not been established, we need not address relocation.

The record, reviewed in its entirety and considering the hardship factors discussed in Matter of Pilch, 21 I&N Dec. at 630-31, does not support a finding that the Applicant's spouse will face extreme hardship if the Applicant lives in China. The record does not establish that the Applicant's spouse faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or child is denied entry into the United States. The hardships the Applicant enumerates, considered individually or in aggregate, do not rise to the level of "extreme" as contemplated by statute and case law.

Although we are sympathetic to the Applicant's and her spouse's circumstances, we conclude that if the Applicant's spouse remains in the United States without the Applicant, the record is insufficient to show that the hardship to him would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Considering all the evidence in its totality, the record is insufficient to show that the Applicant's spouse's claimed hardships would be unique or atypical, rising to the level of extreme hardship, if he remains in the United States while the Applicant returns to live abroad due to her inadmissibility.

As noted above, because the Applicant has not specified whether her spouse would separate from her or relocate to China with her, she must establish that denial of the waiver application would result in extreme hardship to her spouse both upon separation and relocation to China. As the Applicant has not established extreme hardship to her spouse in the event of separation, we cannot conclude she has met this requirement. Thus, we need not reach the question whether relocation would cause extreme hardship to the qualifying relative, and we reserve that issue. We also need not reach and reserve the issue pertaining to the Director's denial based on discretion. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that "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).

CONCLUSION

In proceedings for application for waiver of grounds of inadmissibility under 212(a)(6)(C)(i), the burden of establishing that the application merits approval remains entirely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, the waiver application remains denied.

ORDER: The appeal is dismissed.