U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28208910

Date: NOV. 20, 2023

Appeal of San Diego, California Field Office Decision

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

The Applicant, a citizen of Mexico, 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 committing fraud when obtaining a nonimmigrant visa. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the San Diego, California Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the record did not establish that refusal of admission would result in extreme hardship to the Applicant's only qualifying relative, his U.S. citizen spouse. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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, 8 U.S.C. § 1182(a)(6)(C)(i). USCIS may waive 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).

Hardship to the applicant or others can be considered only insofar as it results in hardship to a qualifying relative. Matter of Gonzalez Recinas, 23 I&N Dec. 467, 471 (BIA 2002).

If the noncitizen demonstrates the requisite extreme hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. Matter of Mendez-Moralez, 21 I&N 296, 299 (BIA 1996). We must balance the adverse factors evidencing an applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. Id. at 300 (citations omitted).

Finally, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality." Matter of Chawathe, 25 I&N Dec. at 376. That decision explains that, pursuant to the preponderance of the evidence standard, we "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." Id.

II. ANALYSIS

A. The Applicant does not contest his inadmissibility.

The Applicant does not contest the finding of inadmissibility for misrepresentation of material facts, which is established in the record. The relevant issue on appeal is whether the Applicant has established extreme hardship to his spouse, as required to qualify for a waiver of inadmissibility under section 212(i) of the Act and, if so, whether he merits the waiver as a matter of discretion.

B. The Applicant's spouse expressed a clear intent to remain in the United States.

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 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.

In the present case, the Director analyzed whether the Applicant's spouse would suffer extreme hardship upon both separation from her spouse as well as relocation with her spouse to Mexico. Upon review, the record contains a clear statement that the Applicant's spouse would remain in the United States if the Applicant's waiver application is denied. The Applicant's spouse's letter stated:

> I would be very worried about my husband's safety if he moved to [redacted] Mexico. I am afraid that he would be a victim of a crime or even being kidnapped since people in Mexico think that people that live or come from the United States are rich. I don't even imagine myself moving to [redacted] Mexico with my daughters with the crimes that are going on and because we are not from Mexico me and my daughters where (sic) born and raised in the USA we love our country and I don't think it would be fair to move them to a different country that they don't even speak or know the Mexican culture. I hardly even go to [redacted] I don't like Mexico at all. My life and daughters are here in [redacted], I believe that they should not be affected or go thru this process or be separated from their dad. From the bottom of my heart please consider our forgiveness we are a family that doesn't want to live separated.

Because the Applicant's spouse expressed a clear intent to remain in the United States if the waiver is denied, the Applicant must establish that if he is denied admission, his spouse would experience extreme hardship upon separation.

C. The Applicant's waiver request and the Director's decision.

In support of his waiver request, the Applicant submitted statements from him and his U.S. citizen spouse, a psychological evaluation of the Applicant's spouse, other health records of his spouse, financial records, letters from family and friends, country conditions evidence pertaining to Mexico, U.S. birth certificates for the two children of the Applicant and his spouse, and a brief of counsel.

The Director noted that a letter from the Applicant's spouse's psychologist states the spouse began therapy to deal with anxiety after the Director sent a Request for Evidence in connection with the Applicant's inadmissibility to the United States. The Director found the psychological hardship was what is "normally expected upon deportation" and does not rise to the level of extreme hardship.

The Director also noted that the psychologist discussed anxiety from claimed financial hardship if the Applicant is not admitted. The Applicant corroborated the claimed financial hardship with tax returns and expenses (such as rent and auto insurance), and his and his wife's statements. While the Director recognized that the Applicant's wife holds a minimum wage job, the Director found that the Applicant "was still living in Mexico when [his] wife had [his] first child [in [redacted] 2016]; which shows that [his] wife was able to care for her daughter financially without [the Applicant's] assistance…As a result, the hardship outlined does not arise to a level that is unusual or beyond that which would normally be expected upon deportation."

On appeal, the Applicant submitted a brief arguing that the Director overlooked hardship and did not properly weigh the hardship. The Applicant asserts the following errors:

- The Director did not fairly assess the financial hardship of the Applicant's wife. The Applicant's brief states:

> Although it is true that [the Applicant's spouse] was making ends meet prior to the couple's marriage, this does not negate the fact that [the Applicant's spouse] currently relies heavily on [the Applicant] for support. She does not make enough income to support herself and her two young children. See Ex. 6. [income tax returns, personal check payment to Applicant, expenses]. She is unable to be the sole sponsor for her husband as she relies on his income in order to make ends meet....

- The Director did not consider the cost of childcare for two children.
- The Director failed to aggregate hardship.

Upon de novo review, the record does not reflect that the Director considered hardship factors to the Applicant's spouse in aggregate, or assessed the Applicant's spouse's income and the financial impact of the Applicant and his wife having a second child. We note that the Applicant's wife's circumstances have changed since 2016 when she resided in the United States without the Applicant, while caring for their only child at the time. Regarding financial hardship, the Director noted submission of the Applicant's wife's 2020 tax return. The tax return reflects the spouse's wages were $18,374. We take administrative notice that the United States Department of Health and Human Services (HHS) Poverty Guidelines for a household of three (the Applicant's spouse and two children) is currently $24,860. Health and Human Services Poverty Guidelines for 2023, https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines.[1] In 2020, the Applicant's spouse's income was likewise below the poverty 2020 guidelines.[2]

III. CONCLUSION

As the record does not reflect that the Director considered all the hardship in the record, we will return the matter to the Director to consider the totality of evidence of extreme hardship upon separation in the first instance and to redetermine whether the Applicant has established eligibility for a waiver of inadmissibility and warrants the waiver in the exercise of discretion.

ORDER: The decision of the Director of the San Diego, California Field Office, is withdrawn. The matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

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[1] See Matter of R-R, 20 I&N Dec. 547, 551 (BIA 1992) ("It is well established that administrative agencies and the court may take judicial (or administrative) notice of commonly known facts") (citation omitted).

[2] In 2020, the poverty guideline for a household of three was $21,720, https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references/2020-poverty-guidelines. The Applicant's spouse's 2020 salary of $18,374 fell below the 2020 guideline.