U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28048432

Date: NOV. 27, 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 Field 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, her lawful permanent resident 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).

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. In the present case, the Applicant's spouse expressed an intent to remain in the United States, saying "[l]iving in Mexico is not an option for me…." The Applicant must, therefore, establish that if she is denied admission, her spouse would experience extreme hardship upon separation.

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. The decision in Matter of Chawathe 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

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 her spouse, as required to qualify for a waiver of inadmissibility under section 212(i) of the Act and, if so, whether she merits the waiver as a matter of discretion.

In support of her waiver request, the Applicant submitted: the statement of her spouse; the spouse's medical documentation including evidence relating to a diagnosis of diabetes and mixed hyperlipidemia, and a psychological evaluation diagnosing adjustment disorder with anxiety finding that it would be exacerbated if the Applicant is removed; letters of support from the Applicant's

community, friends and family; documentation relating to the Applicant's employment including a letter from her employer, a Form W-2, and paystubs; the 2020 Federal Tax Return of the Applicant and her spouse; a letter regarding the Applicant's rent; photos; and evidence of conditions in Mexico. The Director found that the record did not establish extreme hardship. With respect to alleged medical hardship, the Director stated that "it is unclear why [the Applicant] could not continue to assist in monitoring [her] spouse's health should she be required to leave the United States." The Director found that there was no basis in the record for the Applicant's assertion that her spouse's level of stress and anxiety "would go beyond the ordinary consequences of removal." Regarding financial circumstances, the Director acknowledged that the Applicant supported her spouse after his online sales business closed because of the Covid-19 pandemic. The Director found, however, that the Applicant was "unable to provide a satisfactory explanation of why [her spouse] has been unable to resume his online sales business, which he began sometime in the early 1990s…" The Director relies on an account in the psychologist's report of how the spouse started the business in [redacted] Georgia and moved his operations to [redacted] Nevada after his divorce. The Director found that "[t]his demonstrates that his business has previously endured changes in location and it has not been established that [the spouse] would be unable to resume the business from a different site again."

The Director denied the waiver and did not reach the discretionary analysis, finding that the Applicant did not meet her burden of establishing extreme hardship to her spouse upon separation.

On appeal, the Applicant submitted: a brief; the Applicant's spouse's 2021 Federal Income Tax Return; the Applicant's 2021 Form W-2; articles discussing challenges to small businesses in the United States including inflation, supply chain problems, and worker shortages; information about pandemic unemployment assistance; an article estimating that the average caretaker salary in Mexico is MXN 130,598, which the Applicant asserts is equivalent to approximately $6,500; an article on the impact of diabetes on mental health; and a supplemental declaration by the Applicant's spouse asserting that he cannot restart his business due to economic conditions. The Applicant asserts the following errors:

- The Director applied an overly restrictive interpretation of "extreme hardship."
- The Director failed to consider the Applicant's husband's age, length of residence in the United States, level of education, and integration in U.S. culture including language.
- The Director did not consider the economic and financial evidence submitted.
- The Director failed to aggregate hardship.

Upon review, we observe that the Applicant's spouse is currently 62 years old and has been a lawful permanent resident of the United States for 28 years, since August 1995. The 2020 tax return shows income of $28,694, all of which was earned by the Applicant—as reflected in the Applicant's 2020 Form W-2.

The new evidence that the Applicant submitted on appeal further shows her spouse's financial situation. A 2021 federal tax return for the Applicant's spouse shows that all of his income came from unemployment compensation and that he suffered a business loss of $9,811. The Applicant was the sole income wage-earner in 2021, and her newly submitted 2021 Form W-2 reflects an income of $35,539.

Responding to the Director's comment regarding the Applicant not adequately explaining why her spouse cannot restart his business, the Applicant furnishes articles on appeal explaining that small businesses are struggling due to inflation, supply chain problems, and worker shortages. In a supplemental declaration of the Applicant's spouse, he explains that his business relied on international trade shows and conventions that have been curtailed due to the Covid-19 pandemic.

Because the record does not indicate that the Director has reviewed the additional documentation submitted on appeal, we will return the matter to the Director to consider the new claims and evidence of extreme hardship and to determine whether the Applicant warrants a waiver in the exercise of discretion. Upon remand, the Director may analyze the Applicant's spouse's age, length of residence in the United States, financial dependence on the Applicant, his health, and aggregate all the relevant hardship factors. See 9 USCIS Policy Manual, supra, at B.5.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.