U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28102122

Date: OCT. 03, 2023

Appeal of National Benefits Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa abroad as the beneficiary of an approved Form I-130, Petition for Alien Relative, filed by her lawful permanent resident spouse, 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 Nebraska Service Center denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, after concluding that 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 spouse would suffer extreme hardship if she remained separated from him, as required for the waiver. The matter is now before us on appeal. 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.

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. 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). 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).

As noted to above, the Applicant had submitted a Form I-601 to overcome the ground of inadmissibility found in section 212(a)(6)(C)(i) of the Act. In support of her Form I-601, the Applicant submitted affidavits from her spouse who stated that he lives with his adult daughter in the United States, that he had no other relatives in China, and that the environmental conditions in China were poor. He claimed that he would suffer hardship if he remained in the United States without the Applicant because she used to measure his blood pressure and cook low-sodium food to manage his hypertension and hyperlipidemia, which have deteriorated while in the United States and require medications to stabilize. He further claimed that he underwent surgery to relieve back pain in 2019 but that his condition will deteriorate as he gets older. He stated his back injury limits his ability to work full time and this gave him concern over his future financial security and ability to move out of his daughter's home. The spouse also stated that he missed his wife and as she is younger than him, he would be able to rely on her for financial support in the future if she were in the United States. Additionally, the Applicant submitted statements from her stepdaughter wherein she stated that her father forgets to take his medications and needs the Applicant to remind him, as well as to provide financial support and other personal care. Finally, the Applicant submitted medical documentation regarding her spouse's medical history as well as some financial documents that include his car payment, car insurance, and a selection of grocery receipts. The Director denied the Form I-601, concluding that while the Applicant demonstrated that her spouse may suffer some hardship and adverse effects due to their continued separation, the record was insufficient to establish that the claimed emotional hardship he would suffer would amount to extreme hardship.

On appeal, the Applicant asserts that she submitted adequate documentation to establish her spouse would suffer extreme hardship and that in general either a prolonged or permanent separation rises to the level of extreme hardship. In support of the appeal, the Applicant submits a statement of appeal from counsel of record and her spouse's passport biographic page and resubmits copies of her passport biographic page and her spouse's permanent resident card.

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 must establish that her spouse would suffer extreme hardship if she were denied admission. 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. Demonstrating extreme hardship under both scenarios is not required if an applicant's evidence establishes that one of these scenarios would result from the denial of the waiver. *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. *Id.* In the present case, the spouse indicates that returning to China is not an option, but he does not specifically indicate whether he will 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.

After reviewing the evidence submitted with the waiver application and on appeal, the Applicant has not established the requisite hardship to her spouse upon continued separation. The record as it relates to hardship lacks the specificity and detail needed to make a finding that extreme hardship would result upon separation. We note the Applicant provided evidence of the spouse having had a lumbar

laminectomy in 2019 and that he was being treated for hypertension, gingivitis, and hyperlipidemia. However, the last report from the lumbar laminectomy indicates that the "patient is doing well, has excellent pain control" and that he could "[r]eturn to work as tolerated." The medical documentation otherwise reflects that his hypertension, gingivitis, and hyperlipidemia are being treated with prescriptions. The documentation does not otherwise clarify the nature and severity of these conditions or how they affect the spouse's daily activities or employment, nor does it explain to what degree he would be dependent on the Applicant to alleviate any symptoms. Finally, while the Applicant may be able to assist her spouse financially with his expenses if she were present in the United States, the record is insufficient to establish that the economic detriment the spouse may suffer if they remained separated, either alone or cumulatively, would rise to the level of extreme hardship.

When considering the above factors in the aggregate, the Applicant has not established by a preponderance of the evidence that any 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. While the Applicant claimed her spouse would suffer extreme hardship if he were to relocate to China, because the failure to establish extreme hardship upon separation is dispositive to this case, we need not address the relocation scenario and hereby reserve the issue. *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"). Similarly, because the Applicant has not demonstrated extreme hardship to a qualifying relative if she is denied admission, we need not consider whether she merits a waiver in the exercise of discretion.

ORDER: The appeal is dismissed.