U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27855703

Date: OCT. 4, 2023

Appeal of Lawrence, Massachusetts 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 sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i).

The Director of the Lawrence, Massachusetts Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601). The Director first determined that the Applicant was inadmissible under sections 212(a)(9)(B)(i) of the Act, for accruing more than one year of unlawful presence in the United States prior to her last departure, and 212(a)(6)(C)(I) of the Act, for fraud or willful misrepresentation. The Director then concluded that the record did not establish that refusal of the Applicant's admission would cause extreme hardship to a qualifying relative or that a favorable exercise of discretion was warranted. On appeal, the Applicant contests one of the grounds of inadmissibility and asserts that she has established eligibility for the benefit sought.

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, as explained below, we will remand the matter to the Director for the entry of a new decision.

I. LAW

A 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. 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.

A noncitizen who has been unlawfully present in the United States for 1 year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i) of the Act. This inadmissibility may be waived as a matter of

discretion if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent. Section 212(a)(9)(B)(v) 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) (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).

If the noncitizen demonstrates eligibility for a waiver, he or she must also show that U.S. Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver. Sections 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 Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing the 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). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the foreign national and his or her family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

II. ANALYSIS

On appeal, the Applicant contests inadmissibility under section 212(a)(9)(B)(i) of the Act. The Applicant also asserts that she has established that her spouse will experience extreme hardship if she is denied admission and that she merits a favorable exercise of discretion. The issues on appeal therefore are whether the Applicant is inadmissible under section 212(a)(9)(B)(i) and whether she has established eligibility for the benefit sought.

A. Inadmissibility Under Section 212(a)(9)(B)(i) of the Act

The Applicant maintains on appeal that while she overstayed her admission and accrued unlawful presence of at least 365 days prior to her most recent departure in 2008, ten years have passed since she last triggered the 10-year-bar and she no longer requires a waiver of this ground of inadmissibility. We agree.

In June 2022, USCIS issued policy guidance clarifying inadmissibility under section 212(a)(9)(B) of the Act. *See* 8 *USCIS Policy Manual* O.6, https://www.uscis.gov/policymanual; *see also* Policy Alert PA-2022-15, *INA 212(a)(9)(B) Policy Manual Guidance* (June 24, 2022), https://www.uscis.gov/sites/default/files/document/policy-manual-updates. The policy guidance clarifies that the statutory 3- or 10-year bar to readmission under section 212(a)(9)(B) of the Act begins to run on the day of departure or removal (whichever applies) after accrual of the period of unlawful presence, but a noncitizen subject to the 3- or 10-year bar is not inadmissible to the United States under section 212(a)(9)(B) of the Act unless they depart or are removed and seek admission within the 3- or 10-year period following their departure. *See* 8 *USCIS Policy Manual* at O.6(B). The policy guidance further clarifies that a noncitizen determined to be inadmissible under section 212(a)(9)(B) of the Act but who again seeks admission more than 3 or 10 years after the relevant departure or removal is no longer inadmissible under section 212(a)(9)(B) of the Act even if they returned to the United States, with or without authorization, during the statutory 3- or 10-year period because the statutory period after that departure or removal has ended. *See id.*

The Applicant is no longer inadmissible pursuant to section 212(a)(9)(B)(i) of the Act because more than 10 years have elapsed between her most recent departure from the United States and the instant request for admission. Nevertheless, the Applicant remains inadmissible to the United States pursuant to section 212(a)(6)(C)(I) of the Act, for fraud or willful misrepresentation, a ground she does not contest on appeal. She therefore needs a waiver of inadmissibility pursuant to section 212(i) of the Act.

B. Waiver of Inadmissibility Under Section 212(i) of the Act

In the decision to deny the waiver application, the Director determined, in part, that the Applicant's spouse's hardship claims were the Applicant unable to remain in the United States were not credible. The Director noted that the Applicant's spouse's intentions to relocate abroad with the Applicant were "a complete shift in his claimed intentions from those expressed in support of [the Applicant's] prior Form I-601" and the discrepancy in the Applicant's claimed intentions had a "serious effect on his credibility." The Director also determined that there were contradictions with respect to the Applicant's spouse's mother's medical conditions and their impact on the Applicant's spouse were he to relocate aboard, further undermining the Applicant's spouse's credibility. The Director further noted that the Applicant's spouse had failed to list all of his relatives in Colombia, thereby raising questions regarding the hardship claims he had made were he to reside in Colombia. The Director also raised concerns with respect to the Applicant's spouse's mental health issues and their timing, and the purported problematic country conditions in Colombia. The Director also explained that the record did not establish what percentage of the household's income was provided by the Applicant, and to what extent the Applicant's and her spouse's business operations and profitability would be affected by the Applicant's removal and her spouse's relocation to Colombia.

In addition to the deficiencies raised by the Director with respect to the extreme hardship claims in the record, the Director determined that due to the "numerous significant negative discretionary issues" in the Applicant's case, a favorable exercise of discretion was not warranted.

On appeal, the Applicant and her spouse address the deficiencies raised by the Director. Most notably, the Applicant's spouse submits an affidavit responding to concerns raised by the Director with respect

to his credibility and hardship claims. The Applicant's spouse explains why his intent, were his spouse unable to remain in the United States, had changed over the years. The Applicant's spouse also provides clarification regarding his relatives, both in the United States and Colombia, and his relationship to them. In addition, the Applicant's spouse details that he and the Applicant share equal responsibility for their income and liabilities, including those of the business, and were they to relocate abroad, they would be forced to sell their business and forfeit their investments. The Applicant's spouse also addresses the concerns raised by the Director with respect to his mental health issues and their timing.

In addition to the above-referenced affidavit, the Applicant submits a letter from her mother-in-law and records pertaining to her medical condition, to further support the contention that her spouse would experience hardship were he to leave his mother and relocate to Colombia. The Applicant also submits documentation about her and her spouse's business ownership and evidence of taxes paid. Lastly, the Applicant submits additional country condition reports for Colombia, including a travel advisory urging U.S. citizens to reconsider travel to Colombia due to crime and terrorism.

As the Applicant has submitted documentation on appeal in support of her contention that the deficiencies raised by the Director have been addressed, we find it appropriate to remand the matter for the Director to review the documentation and determine if the Applicant has established extreme hardship to a qualifying relative. If the Director finds the Applicant has established extreme hardship to her U.S. citizen spouse, then the Director must consider whether the Applicant merits a favorable exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis, which, if adverse to the Applicant, shall be certified to us for review.