U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27751649

Date: OCT. 04, 2023

Appeal of Holtsville, New York Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant 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). The Director of the Holtsville, New York Field Office denied the Applicant's Form I-601, Application to Waive Inadmissibility Grounds (Form I-601), after concluding he was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud and misrepresentation and that the record did not establish that his spouse would suffer extreme hardship if he were removed from the United States, as required for the waiver. The matter is now before us on appeal. 8 C.F.R. § 103.3. The Applicant claims that the Director erred by finding the hardship his spouse would experience did not rise to the requisite level.

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.

I. LAW

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).

II. ANALYSIS

As alluded 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 his Form I-601, the Applicant submitted an affidavit from his spouse who stated she wanted to remain in the United States because Colombia was a dangerous and violent country, that she would have a difficult time finding suitable employment, and that she did not want to be separated from her family in the United States. She claimed that she would suffer hardship if she remained in the United States without the Applicant in part because she suffered from post-traumatic stress disorder stemming from her previous husband's murder in 2006 and feared that her condition would deteriorate if the Applicant was removed from the United States. She also claimed she was in poor health due to a recent hysterectomy and ongoing treatment for glaucoma and needed the Applicant's support and comfort that he provides. No other documentation was submitted with the Form I-601, however the Applicant had submitted certain documents in support of other applications.[1] The Director denied the Form I-601, noting that the Applicant had not provided any medical, financial, or familial documents, nor any country conditions information to support the extreme hardship claims. Given the lack of evidence, the Director determined that the Applicant had not established his spouse would suffer extreme hardship if he was removed from the United States.

On appeal, the Applicant states that the Director erred in concluding his spouse will not suffer extreme hardship because they did not consider evidence that was submitted with other applications. The Applicant indicates that his wife wishes to remain in the United States and would suffer extreme hardship if she was separated from him, but also that she would suffer extreme hardship if she relocated to Colombia. The Applicant claims that the Director should have considered his spouse's mental health when making the extreme hardship determination and that his spouse suffers from poor health for which he provides comfort and emotional support. Finally, the Applicant advises that his spouse relies on him for financial support as well as performing landscaping and repairs to their home and that he helps care for his granddaughter because his spouse's daughter suffers from systemic lupus. In support of the above claims, the Applicant submits a statement from his spouse, a psychological evaluation for his spouse completed in 2019 that diagnoses her as having adjustment disorder with mixed anxiety and depressed mood, medical documents related to his spouse's surgery performed in 2017 (presumably related to her hysterectomy), a letter from his spouse's doctor indicating she suffers from open angle glaucoma, a 2022 jointly filed tax return, a mortgage statement dated March 18, 2023, birth certificates for his spouse's children, a letter of support from and medical documents related to his step-daughter, and the 2022 U.S. Department of State Human Rights Report for Colombia.

[1] The Form I-601 in the instant case is part of the second application packet to adjust status to that of a lawful permanent resident that is in the record. The Applicant previously applied to adjust status to that of a lawful permanent resident in 2019. Each application packet contains supporting documents and evidence, including a 2019 jointly filed tax return. The first application was denied for reasons other than the Applicant's inadmissibility and his Form I-601 was administratively closed.

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 he must establish that his spouse would suffer extreme hardship if he 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 (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)). An 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 spouse indicates she wishes to remain in the United States but does not clearly indicate whether she will remain in the United States or relocate to Colombia if the Applicant's Form I-601 is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

After reviewing the evidence submitted with the Form I-601 and on appeal, the Applicant has not established the requisite hardship to his spouse. The Applicant has not submitted specific and detailed evidence needed to established extreme hardship would result upon separation.

As noted above, the Applicant provided medical documentation indicating his spouse has been diagnosed with glaucoma, adjustment disorder with mixed anxiety and depressed mood, and that she had surgery in 2017. The documentation, however, does not provide sufficient detail regarding the frequency or severity of any symptoms or a specific treatment plan, nor does the documentation clarify how these conditions affect the spouse's current daily activities or employment or to what degree she is dependent on the Applicant given the conditions.

Additionally, the Applicant claims his spouse would suffer financially if she were separated from him, specifically that she could not afford to pay for her mortgage, car insurance, or other household expenses by herself. However, we note that federal tax returns from 2019 and 2022 show the Applicant had taxable income of $12,720 and $4,560 in those years, respectively, whereas his spouse had taxable income of $52,053 and $66,314, respectively. And while the Applicant provided a copy of the mortgage statement for his spouse's property, the mortgage obligation appears to be shared between the spouse and her son who lives with her and is employed. The record reflects that the spouse also lives with her daughter who is married and employed. The record does not contain details of any expenses beyond the mortgage payment and does not explain how the Applicant's spouse is financially dependent on him given the disparity in income and availability of other familial support.

Finally, while the Applicant provides assistance to his stepdaughter and grandchild, section 212(i) of the Act limits the requirement of showing hardship to U.S. citizen or lawful permanent resident spouses and parents, and the Applicant has not established the degree to which any hardship to his spouse's children would extend to his spouse or how it would be unusual or beyond what would normally be expected upon separation.

III. CONCLUSION

When considering the above factors in the aggregate, the Applicant has not established by a preponderance of the evidence that any hardship his 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 Form I-601 would result in extreme hardship to his spouse both upon separation and relocation. As the Applicant has not established extreme hardship to his spouse in the event of separation, he has not met this requirement. While the Applicant claimed his spouse would suffer extreme hardship if she were to relocate to Colombia, 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) (noting that "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 he is denied admission, we need not consider whether he merits a waiver in the exercise of discretion.

ORDER: The appeal is dismissed.