U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27180071

Date: OCT. 16, 2023

Appeal of Holtsville, New York Field Office Decision

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

The Director of the Holtsville, New York Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), to waive the Applicant's inadmissibility, concluding that he had not established extreme hardship to his U.S. citizen spouse, as required to demonstrate eligibility for a discretionary waiver under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i) as well as denying the waiver on discretionary grounds. On appeal, the Applicant asserts his eligibility for the waiver.

The Applicant bears the burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The matter is now before us on appeal. 8 C.F.R. § 103.3. Upon de novo review, we will dismiss the appeal.

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 generally 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda. Demonstrating extreme hardship under both 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. The applicant may meet this burden by submitting a statement from the qualifying relatives certifying under penalty of perjury that the qualifying relatives 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 says she "would be forced to live here in the United States without him...I would not be willing to relocate...." The Applicant must, therefore, establish that if he is denied admission, his spouse would experience extreme hardship upon separation.

II. ANALYSIS

The Director determined the Applicant, a citizen of Albania, was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact, and the Applicant, who is seeking adjustment of status, therefore filed this Form I-601 to waive his inadmissibility. In denying the Form I-601, the Director determined that the Applicant was not eligible for a waiver under section 212(i) of the Act because he had not established extreme hardship to his U.S. citizen spouse with the presented evidence, i.e. his spouse's affidavit and a psychological evaluation of his spouse. The Applicant's spouse's affidavit asserted emotional, psychological, and financial hardship if the Applicant's waiver is denied. Regarding financial hardship, the Applicant's spouse stated that she had been unemployed during the Covid-19 pandemic, that she is unable to pay her living expenses and fears "she would have to go on public assistance without [the Applicant's] assistance." The Director found that the psychological evaluation did not demonstrate emotional hardship exceeding that which is usual or expected and found that the Applicant did not document financial hardship on his spouse.

On appeal, the Applicant does not contest the inadmissibility finding. The Applicant submits a brief disagreeing with the Director's weighing of the hardship in the established record, including that the Director gave inadequate weight to the evaluation of the psychologist who saw the Applicant's spouse. The Applicant also submits new evidence, a joint tax return for 2021 and a corporate tax return for the Applicant's business, to support his claim of financial hardship on his spouse. The Applicant claims that the documentation of financial hardship, aggregated with the psychological and emotional hardship already in the record, meets his burden of demonstrating extreme hardship on his spouse. The tax documents demonstrate that the Applicant's spouse earned $59,595 in 2021, aggregated from the Applicant's spouse's three W-2's for 2021 with gross income amounts of $15,676, $15,889, and $28,430. The corporate tax returns show business income of $35,620 and "other income - Taxable Grant from Form 1099-G in the sum of $15, 650, for a total business income of $57,652. In addition, the Applicant's wife previously submitted a Form I-864, Affidavit of Support Under Section 213A of the INA, on behalf of the Applicant (Affidavit of Support) with supporting evidence certifying she has adequate income to support herself and the Applicant so that they would not have to seek public assistance. The Applicant's Form I-944, Declaration of Self-Sufficiency, indicates that the Applicant has no mortgage, car loan, credit card debt, education loans, tax debts, liens, personal loans and no

other liabilities or debts. The record does not contain sufficient evidence to demonstrate the Applicant's spouse would experience financial hardship without the Applicant present, or that the spouse would have to rely on financial assistance provided by the government. Accordingly, we find that the Applicant has not demonstrated that financial hardship on his spouse would exceed what is usual or expected if the waiver is denied.

The Applicant asserts that because the Director provided a decision within three weeks, the short deliberation time reflects the Director's failure to provide meaningful review. However, we find that the Director's analysis was legally sufficient based on the record.

The record, reviewed in its entirety and considering the hardship factors discussed in Matter of Pilch, 21 I&N Dec. at 630-31, does not support a finding that the Applicant's spouse will face extreme hardship if the Applicant lives in Albania. The record, in the aggregate, does not establish that the Applicant's spouse will face greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is denied entry into the United States. The hardships the Applicant enumerates, in the aggregate, do not rise to the level of "extreme" as contemplated by statute and case law.

Because the Applicant's statutory ineligibility for a waiver under section 212(i) of the Act is dispositive of the appeal, we reserve the issue of whether the Director's discretionary finding was in error. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

Although we are sympathetic to the Applicant and her spouse's circumstances, we conclude that if the Applicant's spouse remains in the United States without the Applicant, the record is insufficient to show that the hardship to her would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Considering all of the evidence in its totality, the record is insufficient to show that the Applicant's spouse's claimed financial, emotional, and psychological hardships in the aggregate would be unique or atypical, rising to the level of extreme hardship, if she remains in the United States while the Applicant returns to live abroad due to his inadmissibility.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(a)(6)(C)(i), the burden of establishing that the application merits approval remains entirely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not sustained that burden. Accordingly, the waiver application remains denied.

ORDER: The appeal is dismissed.