U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28153935

Date: OCT. 18, 2023

Appeal of Brooklyn, New York 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 section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). The Director of the Brooklyn, New York Field Office denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, after concluding 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 lawful permanent resident spouse, the qualifying relative, would suffer extreme hardship if the Applicant was removed from the United States, 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. *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). 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 mentioned above, the Applicant 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 a personal statement from her spouse who stated that everyone in his family was in the United States, that he and the Applicant do not work, and that his son and daughter supported him financially. He added that his health was not good and that he suffered from high blood pressure, high blood sugar, and high cholesterol, and that he has been referred to a cardiologist. He claimed that he had been married for 45 years without separation, including living together in the United States since 1994, and that he would not survive without the Applicant because he did not know how to cook or take care of himself and needed her support. He feared that if the Applicant were deported, he would never see her again because he would be too old to travel and because airline tickets were too expensive. He also claimed that he would not relocate to China because he could not obtain suitable healthcare there and that he did not want to be separated from his family in the United States, all of whom, other than the Applicant, have lawful status. Additional evidence submitted with the Form I-601 included copies of certain identity documents for the Applicant, her spouse, their adult U.S. citizen and lawful permanent resident children and grandchildren; copies of medical records for the spouse; family photos; and country conditions information for China. The Director denied the Form I-601, noting that the spouse was supported financially by his children and that the record, including the country conditions information provided for China, did not establish hardship to the spouse if he remained in the United States separated from the Applicant.

On appeal, 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 she 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 (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, because the record does not clearly identify whether the spouse will remain in the United States or relocate, the Applicant must establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

In support of her appeal, the Applicant describes in greater detail her spouse's health problems, including chronic hepatitis B, hypertension, diabetes, atrial fibrillation, stomach and eye problems, and a benign tumor in his liver. She fears that because her spouse has diabetes, he may not be able to notice problems with his heart, which could result in a stroke or heart failure. She explains that her spouse currently takes 11 different kinds of medication that she helps organize and administer to him, and that he is completely dependent on her for his daily living. Finally, she confirms that her husband will not relocate to China because he cannot obtain proper health care there. In support of her statement she provides additional evidence, including letters from doctors that confirm the spouse's diagnoses of chronic hepatitis B, hypertension, diabetes, and atrial fibrillation and also explain that

the Applicant takes care of her spouse and accompanies him on his medical visits; reports from a radiologist regarding an abdominal examination and possible liver mass; doctors' notes excusing the spouse from work or school due to a cataract extraction; and information related to the spouse's prescriptions.

After reviewing the evidence submitted with the Form I-601 and on appeal, the Applicant has not established the requisite hardship to her 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 showing her spouse has been diagnosed with several medical conditions and that she provides assistance managing these conditions. The documentation, however, reflects that the conditions are being treated with prescriptions and does not otherwise provide sufficient detail regarding the frequency or severity of the conditions or any related symptoms or a specific treatment plan, nor does the documentation clarify how the conditions affect the spouse's current daily activities or to what degree he is dependent on the Applicant given the conditions and the availability of other familial support.

Similarly, we acknowledge the Applicant's claim and evidence of emotional and financial hardship, including that separation may be permanent because of his, age, health, and the cost of travel. However, the record reflects that the spouse is financially supported by his adult children in the United States, and the medical documentation and other evidence in the record does not indicate he would be financially or medically unable to travel to China to visit the Applicant. Additionally, while we acknowledge the length of the Applicant's and her spouse's marriage and the assistance with daily living and emotional support the Applicant provides to him, the record indicates that the spouse's adult children reside in the United States and does not reflect that they would be unable to provide the emotional, medical, and financial support the spouse needs. Accordingly, the record does not establish the hardship associated with the Applicant's absence would be unusual or beyond what is normally expected upon separation.

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. The Applicant therefore has not established that she is eligible for a section 212(i) waiver of inadmissibility. As noted above, the Applicant must establish that denial of the Form I-601 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 has provided evidence that her spouse might suffer 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) (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 she is denied admission, we need not consider whether she merits a waiver in the exercise of discretion.

ORDER: The appeal is dismissed.