U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28029772

Date: OCT. 26, 2023

Appeal of San Diego, California Field Office Decision

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

The Applicant, a native and citizen of Mexico, sought to adjust status to that of a lawful permanent resident (LPR), which requires him to demonstrate, inter alia, that he is admissible to the United States. Section 245(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(a)(2). The Applicant was determined to be inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), and he applied for a discretionary waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Director of the San Diego, California Field Office, denied the waiver request, concluding that the evidence did not show the requisite extreme hardship to the Applicant's only qualifying relative, his LPR spouse, if the Applicant is refused admission. On appeal, he submits a brief and maintains that his spouse would experience financial and emotional hardships amounting to extreme hardship if he is denied admission.

The Applicant has the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. 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. *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

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. This inadmissibility ground may be waived if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act. If the noncitizen establishes the requisite extreme hardship, they must also demonstrate that their waiver request warrants a favorable exercise of discretion. *Id.*

Whether a 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). While some degree of hardship to qualifying relatives is present in most cases, the hardship must

exceed that which is usual or expected for it to be considered "extreme." *See, e.g.*, *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 (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. Establishing both scenarios is not required if the evidence shows that the denial of the waiver request would result in one of these scenarios. The applicant may meet this burden through a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the applicant or remain in the United States if the applicant is denied admission. *See generally* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda. Here, the Applicant's LPR spouse indicated in her statement to the Director that she intends to remain in the United States if the waiver request is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship upon separation.

I. ANALYSIS

The only issue before us on appeal is whether the Applicant has established extreme hardship to his LPR spouse if the waiver request is denied, for purposes of establishing eligibility for a section 212(i) waiver of his inadmissibility.[1] The Director determined that the evidence of the claimed financial and emotional difficulties related to the Applicant's spouse did not demonstrate that she would experience extreme hardship upon separation if the Applicant is denied admission. In support of the waiver request, he submitted before the Director, among other documents, his statement, his business and corporate tax documents, statements from his spouse and three children, and family photographs. On appeal, he alleges that the Director did not properly consider all the relevant evidence, and maintains that the record establishes that if he is denied admission, his LPR spouse would suffer extreme hardship due to financial and emotional difficulties upon separation.

Upon de novo review, the Applicant has not established the requisite extreme hardship to his spouse upon separation. The Applicant who is 53 years of age and his 50-year-old spouse have been married since 2001. The spouse, who is also a native and citizen of Mexico, became an LPR in August 2020. The record shows that the Applicant currently has a valid nonimmigrant visa, and government records also consistently indicate that the couple continues to split time between here and Mexico. They have three U.S. citizen children, a 21-year-old daughter and two sons, 19 and 26 years old, respectively. The record reflects that the Applicant is very close with his family and he remains their primary income-earner through his extremely lucrative import-export business he has successfully built in Mexico. He and his spouse have not been apart since their marriage and they maintain a family home in [redacted] California, where all the family members resided together when he sought his waiver of inadmissibility. The record also reflects that he and his family have been alternately residing together and separately over the years in the United States and Mexico, frequently visiting each other

[1] The Applicant admits, and the record shows, that he is inadmissible under the Act for fraud or willful misrepresentation, necessitating a waiver under section 212(i) of the Act, for having used an altered passport when he attempted to enter the United States in 1997.

during periods of separation. The Applicant states that in 2011, he lawfully opened an expansion business in [redacted] California, in which his spouse and the three children also have ownership interests as partners since January 2019, and the family as a whole owns 50% of this company. On appeal, the Applicant maintains that his inadmissibility and related separation hardship will continue to hinder his plans to expand and grow his California business, which in turn would worsen his family's financial and emotional wellbeing. The Applicant also adds that living in Mexico may pose safety risk for him and his family when they visit him there in part due to his wealth and their ties to the United States. Based on the foregoing, the Applicant asserts that his LPR spouse would experience extreme hardship if the Applicant's waiver request is denied.

We acknowledge the evidence of the hardships to the Applicant's spouse in the record, including his family's reliance on his financial and emotional support. However, although the Applicant maintains that his family will suffer significant financial and emotional hardship without him in the United States as an LPR—primarily due to their current living and business arrangements limiting his ability to travel and reside here on a long-term basis—the testimonial or documentary evidence provided does not show that his continued inadmissibility would result in the family's financial and emotional deterioration that would amount to extreme hardship to his spouse.

As for his claimed financial hardship, while we acknowledge that he and his family would experience some financial difficulties, the record does not support that they would amount to extreme hardship. The record does not show, for instance, that he would be unable to support his family from Mexico or that they require his financial support. The record also lacks evidence that without the Applicant's presence in the United States, the business here would suffer and worsen the family's financial situation as claimed, particularly as he was able to start and operate this business since 2011, and even distribute ownership interests to each family member in 2019, while still residing in Mexico and successfully running for many years another business there that has over 300 employees and generated over $32 million dollars in gross revenue. The record also reflects that the Applicant's spouse continues to work, and they were able to send both adult children through college. There is also no indication in the record that the two adult children, who are both educated and have business experience and aspirations through the family business, would be unable to assist the spouse, in the event she requires such financial assistance or the Applicant could no longer provide her with support. While the denial of the waiver request may limit the family's desire to grow their business, the record does not show that related hardships would go beyond the commonly expected results of the Applicant's inadmissibility. Although we also acknowledge the family's close emotional ties to and reliance on the Applicant, the record does not show any particular or unusual hardship to his spouse or children. He submitted no new evidence on appeal, and the record otherwise lacks detailed evidence that he could not continue to support his family from Mexico or during his visits to this country, or that his family's claimed financial and emotional needs would require his ongoing personal assistance.

We recognize the Applicant's claim that living in Mexico, where there is high crime, may pose safety risk for him and his family when they visit him there. But the record reflects that the family has been able to visit him in Mexico, where his spouse was also born, raised, and resided with him until 2020, and the record does not otherwise address or describe any hardships to the Applicant there or to his family during their visits. Further, he does not claim that he has ever had any problems traveling to and from the United States, or that he has ever been a victim of a crime in Mexico. The remaining

documents regarding his business success and good character do not specifically relate to the issue of hardship.

As stated, the Applicant has the burden to establish that his LPR spouse would suffer extreme hardship "over and above the normal economic and social disruptions involved" upon separation as a result of his inadmissibility. *Matter of Pilch*, 21 I&N Dec. at 633. The hardships present here do not meet this hardship standard. *Id.* at 630-31, 633; *see also Matter of J-J-G-*, 27 I&N Dec. 808, 813 (BIA 2020) (holding that economic detriment and common emotional hardships also generally do not support a finding of a higher degree requisite hardship in the cancellation of removal context) (citation omitted).

Even considering the evidence its totality, the Applicant has not established that the claimed financial and emotional hardship to his LPR spouse upon separation would go beyond the common results of inadmissibility and amount to extreme hardship. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.