U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28208916

Date: OCT. 31, 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 currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for unlawful presence and fraud or misrepresentation, and she seeks a waiver of those inadmissibilities. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) and 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant these discretionary waivers if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the San Diego, California Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the record did not establish the Applicant's LPR mother, a qualifying relative, would experience extreme hardship because of her continued inadmissibility. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Any foreign national 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 waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or LPR spouse or parent of the foreign national. If the foreign national demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

A foreign national who has been unlawfully present for one year or more, and who again seeks admission within ten years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i)(II) of the Act. A foreign national is deemed to be unlawfully present in the United States if present after the expiration of the period of authorized stay or if present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) 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 LPR 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).

II. ANALYSIS

The Applicant entered the United States without inspection in 1990 and departed in 2003. She reentered the United States several times in 2003 with a fraudulent temporary LPR stamp.[1] Therefore, she was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act for departing the United States after accruing one year or more of unlawful presence, and under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. The Applicant does not contest these findings on appeal. The issue on appeal is whether the Applicant has established extreme hardship to her LPR mother. We determine the record establishes the Applicant's mother would experience extreme hardship due to her continued inadmissibility. Our decision is based on a review of the record, which includes, but is not limited to, statements from the Applicant, her mother, and her family members; medical records and a psychological evaluation; financial records; and information on Mexico.

An applicant may show extreme hardship to a qualifying relative 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. Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. The 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* 9 *USCIS Policy Manual* B 4(B), https://www.uscis.gov/policymanual (explaining, as guidance, establishing extreme hardship upon separation or relocation). In the present case, the record does not contain a statement from the Applicant's mother clearly indicating the intention to either remain in the United States or relocate to Mexico if the Applicant's waiver application is denied. The Applicant must

[1] The Director references an entry in August 2007 with a border crossing card, and another entry in December 2008. However, the record does not indicate these entries and we will therefore not address them.

therefore establish that if she is denied admission, her mother would experience extreme hardship both upon separation and relocation.

The Applicant asserts that her 77-year-old mother would experience emotional, psychological, physical, financial, and medical hardship upon remaining in the United States without her. The Applicant states that her mother lives with her, and she takes care of her completely, including giving her medicine, cooking for her, washing her clothes, and taking her on walks. The Applicant's mother makes similar statements and expresses the emotional difficulty that separation would cause. The Applicant's mother's psychological evaluation details the domestic abuse she experienced in Mexico and the close bond she formed with the Applicant during that time. The psychological evaluation provides that the Applicant's mother lived part-time with the Applicant and part-time with her abusive spouse prior to 2019, but she moved in with the Applicant in 2019 due to her physical health complications and desire to have more distance from her spouse. The psychological evaluation details her physical and emotional reliance on the Applicant since moving in with her.

The Applicant's mother's medical records reflect that she has diabetes, high blood pressure, hypertensive heart disease, and rheumatism, and her psychological evaluation details her use of a walker due to past falls and inability to keep her balance. The psychologist states the Applicant's mother meets the criteria for Major Depressive Disorder, Recurrent, and Other Specified Anxiety Disorder, she has a long history of depression due to childhood and marital abuse, and her psychological functioning would deteriorate due to separation from the Applicant. The record also includes letters from the Applicant's siblings detailing their inability to care for their mother due to their own family and employment commitments. The Applicant's sister states that she is unable to care for their mother as she has a three-year-old child with Down Syndrome, she is with him all the time since he cannot care for himself, and she spends a lot of time with him in therapy and medical appointments. The Applicant's other sister mentions she would be unable to take care of their mother as she is providing for her own family, and she works full-time. The Applicant's brother states that he and his spouse work full-time and would be unable to have his mother live with them. Last, the Applicant mentions that her mother is financially dependent on her in that she lives with her and saves money on caretaking services.

The record reflects that the Applicant's motherly is elderly, lives with the Applicant, and relies on her as her primary caretaker. She is emotionally and physically close to the Applicant based on their past experiences and current living situation. Furthermore, the Applicant's mother receives financial benefits by living with the Applicant, and she has significant medical and psychological issues, which further her need for the Applicant to provide physical and emotional support. The record establishes that the Applicant's mother would experience emotional, psychological, financial, and physical hardship upon separation from the Applicant. Based on the totality of the hardship factors presented, we determine that the Applicant's mother would experience extreme hardship upon separation from the Applicant.

Regarding the Applicant's mother relocating to Mexico, the Applicant claims her mother would experience medical hardship, safety issues, and separation from her family and friends. The Applicant states that her mother has subsidized health insurance in the United States, and she would be unable to obtain medical care in Mexico due to her inability to pay for the services in full and upfront. The record includes evidence of the Applicant's mother's medical issues, the medical service providers

she has in the United States, and her health insurance. Next, the Applicant mentions that [redacted] Baja California, where she would relocate, is not safe. The Applicant references the U.S. Department of State Travel Advisory for Mexico (travel advisory for Mexico), which provides that in Baja California "[t]ransnational criminal organizations compete in the border area to establish narco-trafficking and human smuggling routes. Violent crime and gang activity are common. Travelers should remain on main highways and avoid remote locations . . . criminal organization assassinations and territorial disputes can result in bystanders being injured or killed. U.S. citizens and LPRs have been victims of kidnapping." Additionally, the Applicant states her mother has three other children and several grandchildren in the United States that she would be separated from, and her mother mentions in her psychological evaluation that the majority of her family lives in the United States and she would not want to be separated from them. The record includes evidence that the Applicant's mother's other children are U.S. Citizens or hold LPR status.

The record reflects that the Applicant's elderly mother has U.S. citizen and LPR children and grandchildren in the United States, and she would experience emotional hardship upon separation from them. Furthermore, she is receiving medical treatment in the United States, she would lose her medical service providers and health insurance in the United States, and there is no indication she could afford to pay in full for medical services in Mexico. Lastly, the Applicant's mother would be relocating to an unsafe part of Mexico as indicated in the travel advisory for Mexico. Based on the totality of the emotional, medical, and safety hardship factors presented, we determine that the Applicant's mother would experience extreme hardship upon relocation to Mexico.

As the Director did not make a discretionary finding, we will remand the matter for determination of whether the Applicant merits a waiver in the exercise of discretion.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.