U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22718861

Date: SEPT. 26, 2022

Appeal of Honolulu, Hawaii Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a citizen of China, has applied to adjust status to that of a lawful permanent resident (LPR) 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 Honolulu, Hawaii Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish, as required, that denial of admission would result in extreme hardship to the Applicant's spouse, the only qualifying relative. The Applicant filed an appeal of the decision with this office. On appeal, the Applicant contends that the Director erred by concluding that she is inadmissible and by not considering the evidence of hardship in its entirety. We review the questions raised 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 admission into the United States 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 U.S. citizen or LPR spouse or parent of the noncitizen. If the 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) (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). In these proceedings, it is the applicant's burden to establish by

a preponderance of the evidence eligibility for the requested benefit. Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The issues on appeal are whether the Applicant is inadmissible for fraud or misrepresentation, and if so, whether she has demonstrated that her spouse would experience extreme hardship if the waiver were denied. We have considered all the evidence in the record and conclude that the Applicant is inadmissible for fraud or misrepresentation. We further find that the Applicant has not established that the claimed hardships rise to the level of extreme hardship when considered both individually and cumulatively.

A. Inadmissibility

The record reflects that in November 2014, the Applicant submitted a Form DS-160, Nonimmigrant Visa Application (Form DS-160), seeking an F-1 student visa. In her Form DS-160, she indicated that she had never served in the military and did not have assistance in completing the Form DS-160. However, in January 2020, she indicated on her Form 1-485, Application to Register Permanent Residence or Adjust Status, that from 2011 to 2013, she was a member of the People's Armed Police of China (PAP), the paramilitary wing of the Chinese Communist Party under the command of China's Central Military Commission. The Director determined that the Applicant's failure to disclose her prior military service rendered her inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation of a material fact.

On appeal, the Applicant asserts that she is not inadmissible under section 212(a)(6)(C)(i) of the Act because her military service was not material to her eligibility for a nonimmigrant visa. She contends that section 212 of the Act, which governs the classes of noncitizens ineligible for visas or admission, does not provide that a noncitizen is inadmissible to due to their involvement with the military of a foreign country. She maintains that the only instance of a noncitizen being ineligible for a visa due to having a history of military-type training is in the case of a noncitizen who received training from or on behalf of a terrorist organization. The Applicant argues that her involvement with the PAP was immaterial to the issuance of her F-1 visa because the PAP is not and never has been identified as a foreign terrorist organization.

A misrepresentation is material under section 212(a)(6)(C)(i) of the Act when it tends to shut off a line of inquiry that is relevant to the noncitizen's admissibility and that would predictably have disclosed other facts relevant to his or her eligibility for a visa, other documentation, or admission to the United States. Matter of D-R-, 27 I&N Dec. 105 (BIA 2017). An applicant applying for an F-1 student visa must establish that they are a bona fide student qualified to pursue a full course of study, have a residence in a foreign country which they have no intention of abandoning, and seek to enter the United States temporarily and solely for the purpose of pursuing a course of study. Section 101(a)(15)(f) of the Act

Here, the disclosure of the Applicant's military service would likely have led the consular officer to inquire about the nature of the Applicant's military service and determine whether her sole intention

in requesting entry into the United States was the pursuit of an education, or for another purpose. Because the concealment of her prior military service shut off a line of inquiry which was relevant to her visa eligibility, her misrepresentation was material, rendering her inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States by willful misrepresentation of a material fact.[1]

B. Extreme Hardship

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case her U.S. citizen spouse. 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. Demonstrating extreme hardship under both of these scenarios is not required if an applicant's evidence establishes 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 (discussing, as guidance, extreme hardship upon separation and relocation). In the present case, the Applicant's spouse indicates that he intends to relocate to China if the waiver application is denied. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship upon relocation only.

The record reflects that the Applicant and her spouse married in 2019. The Applicant's spouse asserts that he and Applicant plan on buying a home and starting a family. He states that he is an IT specialist and has been with his employer for 13 years. He maintains that he is the primary caretaker for his father, who suffers from for diverticulitis and spinal issues, and his mother who suffers from anxiety. He further maintains that he suffers from asthma and psoriasis. In addition, he asserts that the Applicant's immigration difficulties have caused him to experience anxiety and depression. He contends that if he is forced to relocate to China, he would experience emotional, medical, and financial hardship resulting from the loss of his employment and benefits; separation from his entire family; the negative impact on his health caused by China's poor air quality, the inability to afford or obtain comparable healthcare; difficulty in obtaining employment, especially because he does not speak Chinese; and adjustment to an unfamiliar environment, including restrictions on freedom of information.

In support of the hardship claims, the record contains, in pertinent part, a psychological evaluation relating to a psychological assessment of the Applicant's spouse. The evaluation indicates that the Applicant's spouse's psychological symptoms are consistent with adjustment disorder with anxiety and depression, moderately severe. The evaluation further indicates that the Applicant's spouse continues to work and manage the responsibilities of his daily life with considerable strain, and during the Applicant's spouse's three sessions, various coping skills, including staying focused

[1] We also note here that section 212(a)(3)(D) of the Act, applicable to applicants inside the United States applying for adjustment of status to that of an LPR, provides that any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party, domestic or foreign, is inadmissible. This ground of inadmissibility is part of a broader set of laws passed by Congress to address threats to the safety and security of the United States.

on goals, and maintaining his activities of daily living and work were discussed. The record also contains a letter from the Applicant's spouse's physician indicating that the Applicant's spouse suffers from seasonal asthma, which requires the use of an inhaler three times a day when triggered, and relocating to China would adversely affect his condition. Lastly, the record contains a letter from the Applicant's spouse's dermatologist indicating that he suffers from psoriasis, which is managed by medication, but would be adversely affected by environmental conditions in China.

Upon de novo review, the Applicant has not established by a preponderance of the evidence that her spouse would endure extreme hardship upon separation. We acknowledge the Applicant's spouse's statements regarding the difficulties that relocation to China and separation from his family would cause him as well as the findings in the psychological evaluation. We also acknowledge that the submitted documentation establishes that the Applicant's spouse would experience some emotional hardship; however, the documentation does not establish the severity of the emotional hardship or any resulting limitations. In addition, with respect to the Applicant's spouse's claim regarding emotional hardship in connection with his parents' health, the record does not contain any medical documentation relating to his parents, therefore, we are unable to assess the emotional impact upon him. The record also does not show how the Applicant's spouse's claimed emotional hardship is unique or atypical compared to other individuals who relocate because their spouse is denied admission. Regarding medical hardship, we acknowledge that the Applicant's spouse suffers from asthma and psoriasis which could be impacted by China's environmental conditions. However, per U.S. Department of State guidance, western-style medical facilities with international staff are available in Beijing, Shanghai, Guangzhou and a few other large cities, and the record does not establish that the Applicant would be unable to access or obtain medical treatment in China.[2] With respect to financial hardship, the record reflects that the Applicant and her spouse have a yearly income of approximately $95,000, and while the couple's finances may be negatively impacted by relocating to China, the record does not demonstrate that the Applicant, an accountant, and her spouse, an IT specialist, would be unable to find employment in China sufficient to support themselves.

Based on the record, we agree with the Director that the evidence submitted does not provide the detail and specificity necessary to make a finding that the claimed hardships amount to extreme hardship when considered either individually or cumulatively. Thus, the Applicant has not established that her spouse's hardships would go beyond the common results of removal and rise to the level of extreme hardship.

ORDER: The appeal is dismissed.

[2] https://china.usembassy-china.org.cn/medical-assistance