U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35407513

Date: DEC. 20, 2024

Appeal of Vermont Service Center Decision

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

The Applicant, a native and citizen of Bangladesh, currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR) as an approved Violence Against Women Act (VAWA) self-petitioner. 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 fraud or misrepresentation and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver to VAWA self-petitioners if refusal of admission would result in extreme hardship to the self-petitioner or to a qualifying relative or qualifying relatives.

The Director of the Vermont Service Center denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the record did not establish that a favorable exercise of discretion was warranted. 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 dismiss the appeal.

I. LAW

A noncitizen who, by fraud or willful misrepresentation, seeks or has sought to procure a visa, documentation, or admission into the United States, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). To overcome this ground of inadmissibility, a VAWA self-petitioner may request a waiver under section 212(i) of the Act, which requires them to show that refusal of admission would result in extreme hardship to the self-petitioner. Alternatively, extreme hardship may be demonstrated to the self-petitioner's U.S. citizen, LPR, or qualified noncitizen parent or child.

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).

If the noncitizen demonstrates the existence of the required extreme hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the noncitizen to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing an applicant's undesirability as an LPR with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted).

II. ANALYSIS

The Applicant misrepresented his identity when applying for asylum. After a hearing before an immigration judge where he affirmed the false identity, the asylum application was denied, and he was ordered deported in 1996 under the false identity. In 2019, USCIS denied the Form I-130, Petition for Alien Relative (relative petition) because USCIS was unable to determine the Applicant's identity after he initially denied ever using another name or date of birth. In the Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application), USCIS determined the Applicant was inadmissible for fraud or misrepresentation and issued a request for evidence (RFE) asking that the Applicant file a waiver application.

In denying the waiver application, the Director reviewed the unfavorable factors including the use of an assumed identity to obtain immigration benefits in applying for asylum and in immigration court, the failure to depart the United States after being ordered deported, unauthorized employment, and a lack of disclosure of the use of another name and date of birth during the relative petition interview. The Director determined that these unfavorable factors outweighed the favorable factors of having the approved self-petition as well as a U.S. citizen son and spouse. The Director further concluded that the challenges of living in Bangladesh would not result in extreme hardship to the Applicant or his family.

On appeal, the Applicant asserts the Director erred in the determinations regarding his immigration history and in the extreme hardship analysis. He contends that he has demonstrated extreme hardship to himself and his U.S. citizen child and that their medical conditions would worsen upon relocation to Bangladesh and that his family would be unable to pay their living expenses if the waiver were denied. He also explains that he regrets using a false identity and he has since made many positive contributions and changes in his life.

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)). The applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that they would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. *See id.* Here, the Applicant did not clearly indicate whether he intended to relocate with his U.S. citizen son or separate, and thus the Applicant must establish extreme hardship upon both relocation and separation. Upon de novo review, the Applicant has not established by a preponderance of the evidence that he or his son would endure extreme hardship upon relocation to Bangladesh[1].

Regarding hardship, the record contains an affidavit from the Applicant, the Applicant's documentation regarding a work-related injury, a letter from his podiatrist, his medical records, and country condition documents. Also included is his son's birth certificate, medical records, and a school report card.

The Applicant indicated he takes medication for high cholesterol and pre-diabetes and that his son has asthma and allergies. The USAID Bangladesh Health Strategy 2022-2027 report included in the Applicant's appeal indicates that "Bangladesh has significantly improved health status over the past two decades, but some indicators lag behind and systematic gaps remain." While acknowledging deficiencies in Bangladesh's health care as compared to the United States, the documentation submitted does not contain specific information regarding healthcare for ailments such as pre-diabetes and high cholesterol, asthma and allergies or whether there is a lack of care for these conditions. The Applicant has made general assertions that specialized treatments are not available in Bangladesh but does not detail the specialized treatments he and his son currently receive or that care is not available in Bangladesh. For instance, the record lacks documentation regarding the frequency of any medical treatments the Applicant and his son receive and how their health is impacted by this treatment. Without more documentation of Bangladesh's health care and treatment availability as well as more on the effect these ailments have on the Applicant and his son, we are not able to assess the impact that relocating would have on the health conditions of the Applicant and his son.

Although the Applicant states that his son has grown up in the United States and that the adjustment to Bangladeshi culture would be difficult, the record does not contain information from the Applicant's son describing the challenges he might face upon relocation. 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. at 630-31 (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).

[1] We note that the Applicant did not indicate on the waiver application that he intends to claim extreme hardship to himself as a VAWA self-petitioner. However, in his statement the Applicant explains that he would suffer hardship upon relocation to Bangladesh and we have considered this information in our determination.

The Applicant contends that Americans, such as his U.S. citizen son, would be in danger in Bangladesh because there have been attacks on Americans. However, the Applicant has not indicated where he would live in Bangladesh. While country conditions do note that areas in Bangladesh suffer from crime, there is no indication that crime is country-wide and that there are not areas that would be safe in Bangladesh. Further, the submissions lack details of Americans being specifically targeted.

Assuming arguendo the Applicant established extreme hardship, he has not established that a favorable exercise of discretion is warranted. The Applicant expresses remorse for using a false identity in some immigration processes and in the I-130 interview. However, he does not explain why he continued to use this identity during immigration court proceedings where he swore under oath that his false name and date of birth were correct. He was ordered deported under the false name. In expressing regret for using another name, the Applicant does not explain that he continued this fraud and swore to the false identity before an immigration judge. In his statement, the Applicant does not fully acknowledge the extent and duration of the fraud he committed in order to obtain immigration benefits, thereby minimizing his role and responsibility for the fraud, a factor weighing against a positive exercise of discretion. Although the Applicant has an approved self-petition and U.S. family members, these positive factors do not overcome the significant negative factors in his case.

III. CONCLUSION

In the end, the Applicant has not established by a preponderance of the evidence that the hardships to his son and himself, considered individually and cumulatively, would rise to the level of extreme hardship upon relocation. The waiver application will remain denied.

ORDER: The appeal is dismissed.