U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34268802

Date: NOV. 22, 2024

Appeal of New York, 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 New York, New York Field Office denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, after concluding he was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud and misrepresentation and that the record did not establish that his U.S. citizen spouse, the qualifying relative, would suffer extreme hardship if the Applicant was refused admission to the United States as required for a section 212(i) waiver of inadmissibility. The matter is now before us on appeal pursuant to 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

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 on their waiver request. *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).

II. ANALYSIS

The Director, in the Applicant's related adjustment of status proceedings, concluded that the Applicant was ineligible to adjust status because he did not establish that he was either inspected and admitted or paroled into the United States as is required by section 245(a) of the Act, and that he was inadmissible under section 212(a)(6)(A)(i) of the Act for being present without admission or parole. The Director also concluded that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act because the record indicated he willfully misrepresented his last date of entry into the United States on his Form I-485, Application to Register Permanent Residence or Adjust Status. The Director denied the instant Form I-601, finding that while the Applicant's U.S. citizen spouse was a qualifying relative for purposes of the section 212(i) waiver of the section 212(a)(6)(C)(i) ground of inadmissibility that the Applicant sought, the evidence did not establish the spouse would suffer the requisite extreme hardship if the Applicant were refused admission into the United States as required for the waiver. 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. Instead, the Applicant asserts the Director erred in denying the Form I-601 and claims the record shows his U.S. citizen spouse would suffer extreme hardship if he were refused admission into the United States.

Because the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, he must establish eligibility for a section 212(i) waiver of his inadmissibility by demonstrating, in part, that his qualifying relative, specifically his U.S. citizen spouse, would suffer extreme hardship if he were refused 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 generally* 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, 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 qualifying relative spouse will remain in the United States or relocate, the Applicant must establish that if he is denied admission that his spouse would experience extreme hardship both upon separation and relocation.

In support of his Form I-601, the Applicant submitted evidence including statements from himself and his spouse wherein they claim the spouse will suffer financial, emotional, medical, and psychological hardship upon separation. The Applicant also submitted two psychological evaluations and medical documents for his spouse, financial records, and a letter of support from their pastor.

Collectively, the record reflects that the Applicant is currently 47 years old and was born in the Dominican Republic. His U.S. citizen spouse, currently aged 55, was also born in the Dominican Republic and naturalized as a U.S. citizen in 2006. The couple was married in 2011. The spouse has three adult children from previous relationships. The oldest child lives in the same city as the spouse.

The youngest two children, who are aged 28 and 23, live with the Applicant and spouse. Both the Applicant and spouse are employed. The record also indicates that the spouse has been diagnosed with certain medical conditions that will be discussed below.

After reviewing the relevant hardship evidence in the record, including the personal statements, and medical and financial documentation provided, the Applicant has not established the requisite extreme hardship to his spouse upon separation.

The Applicant claims on appeal that the Director did not give proper weight to evidence in the record including, in particular, evidence showing the spouse would suffer emotional, psychiatric, and psychological hardship upon separation. Medical documentation and psychological evaluations in the record show the spouse was diagnosed with major depressive disorder, insomnia, adjustment disorder with mixed anxiety and depressed mood, and type 2 diabetes. The Applicant provides in his personal statement that he fears his spouse's mental health would deteriorate if they were separated. The spouse generally asserts in her personal statement that the Applicant provides her with emotional support and ensures she takes her medications. The first psychological evaluation provided by the Applicant states that the spouse's diagnoses of major depressive disorder and insomnia have, "had a major effect on patient mental health and continues to affect patient on a day-to-day basis." The second psychological evaluation concludes generally, with regard to her diagnosis of adjustment disorder with mixed anxiety and depressed mood, that there is a "risk for the development of psychological disturbance and emotional suffering," to the spouse if she is separated from the Applicant. The medical documentation, psychological evaluations, and personal statements, however, do not clarify or provide sufficient probative information regarding the nature and severity of the spouse's medical and psychological conditions or related symptoms; how her condition affects her daily activities or employment; or to what degree she is dependent on the Applicant to alleviate her symptoms. Similarly, the Applicant's and spouse's statements only generally touch on the emotional impact of separation but otherwise lack sufficient detail to establish that the claimed emotional hardship to the spouse would exceed that which is usual or expected upon separation. Additionally, the spouse has three adult children, two of whom live with her, and the Applicant does not claim, and the record does not otherwise indicate, that the three children would be unable or unwilling to provide the medical, emotional, and psychological support the spouse may need if she were separated from the Applicant.

The Applicant also claims that the spouse would suffer financial hardship upon separation. Beyond the Applicant's general assertions, however, his and his spouse's statements do not provide sufficient probative details to support them, and the record does not include other corroborating evidence to establish the claimed financial hardship would be unusual or beyond that which would normally be expected. We also note that the spouse is employed, and the Applicant does not sufficiently describe how her income would be insufficient to meet her financial needs in the Applicant's absence. And as noted above, the spouse has three adult children and the Applicant does not claim, and the record does not otherwise indicate, that the three children would be unable or unwilling to provide the financial support her mother may need if she were separated from the Applicant.

III. CONCLUSION

When considering the above factors in the aggregate, the Applicant has not established by a preponderance of the evidence that any hardship his spouse would face as a result of separation rises

to the level of extreme hardship. As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to his spouse both upon separation and relocation. As the Applicant has not established extreme hardship to his spouse in the event of separation, he has not met this requirement. While the Applicant also claimed that his spouse would suffer hardship upon relocation, because our finding that he did not establish extreme hardship to his spouse 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) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"). The section 212(i) waiver application will therefore remain denied.[1]

ORDER: The appeal is dismissed.

[1] As discussed above, the Director found that the Applicant is statutorily ineligible for adjustment of status because he did not establish that he was inspected and admitted or paroled as is required by section 245(a) of the Act. Accordingly, even if this waiver application were approved, the waiver cannot cure this statutory ineligibility.