U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12801116

Date: MAY 06, 2021

Appeal of Philadelphia, Pennsylvania Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

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 Philadelphia, Pennsylvania Field Office denied the 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.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal because the Applicant has not met this burden.

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 discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national. 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).

II. ANALYSIS

The issue on appeal is whether the Applicant's qualifying relative would experience extreme hardship if the waiver is denied. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record, which establishes that she misrepresented her marital status when entering the United States with a nonimmigrant visa in 2012. We have considered all the evidence in the record and conclude that it does not establish that the claimed hardships rise to the level of extreme hardship when considered both individually and cumulatively.

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. 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/policymanual. In the present case, the record contains no statement from the Applicant's spouse indicating whether he intends to remain in the United States or relocate to Haiti if the waiver application is denied. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

The record reflects that the Applicant and her spouse married in 2015. The Applicant asserts that she and her spouse have lived in separate states, namely Massachusetts and Pennsylvania, since their marriage because she is unable to obtain a job as a certified nursing assistance in Pennsylvania. She contends that she plans to reside with her spouse within the upcoming year in order to assist him in managing his medical conditions. The Applicant's spouse asserts that he is retired and relies upon the Applicant for financial and emotional support. He states that he suffers from hypertension, high cholesterol, and stomach issues. He contends that if he is separated from the Applicant, he will experience financial and emotional hardship resulting from attempting to support two households on a fixed income. He further maintains that he would experience medical and emotional hardship because his health is declining, and he will require more assistance in managing his health conditions as he ages.[1]

We find that the submitted documentation is insufficient to corroborate the claim of extreme hardship upon separation. With respect to financial hardship, based on the documentation of his expenses, the record does not demonstrate that the Applicant's spouse would be unable to afford his primary living expenses. In addition, the record reflects that the Applicant's spouse retired in 1990, and the record does not establish that he was unable to support himself prior to marrying the Applicant in 2015. Further, the record does not establish that the Applicant would be unable to find employment and support herself in Haiti. With respect to medical hardship, the record contains copies of the Applicant's spouse's prescription medication bottles, but the record does not contain documentation that provides

[1] The record reflects that the Applicant's spouse is 79 years old, and the Applicant is 51 years old.

any further detail about the nature and severity of the Applicant's spouse's current conditions or indicate that any assistance is required to manage his conditions. Regarding emotional hardship, while we acknowledge the Applicant's spouse's statements regarding the difficulties he would experience if the Applicant departed the United States, we note that the Applicant and her spouse have lived separately for the entirety of their relationship. The record does not contain any further detail about the impact of any emotional hardship the Applicant's spouse may experience in his daily life or demonstrate hardship that exceeds that which is usual or expected due to separation from a loved one.

Based on the record, we cannot conclude that, when considered in the aggregate, any financial, emotional, and medical hardships the Applicant's spouse would experience upon separation from the Applicant would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship.

The Applicant must establish that denial of the waiver application would result in extreme hardship to a qualifying relative upon both separation and relocation. As the Applicant has not established extreme hardship to her qualifying relative in the event of separation, we cannot conclude she has met this requirement. The waiver application will remain denied.

ORDER: The appeal is dismissed.