U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29651648

Date: FEB. 20, 2024

Appeal of New York, New York Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Ireland, seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for fraud or misrepresentation. The Director of the New York, New York Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the record did not establish that the Applicant's only qualifying relative, his U.S. citizen spouse, would experience extreme hardship because of his 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 dismiss the appeal.

LAW

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, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). 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 noncitizen. Section 212(i) of the Act. If the noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. 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) (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).

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/legal-resources/policy-memoranda. Demonstrating extreme hardship under both 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. 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 id. In the present case, the record is unclear whether the Applicant's spouse would remain in the United States or relocate to Ireland if the Applicant's waiver application is denied. The Applicant must, therefore, establish that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

ANALYSIS

The issues on appeal are whether the record establishes that the Applicant is inadmissible for fraud or misrepresentation and if so, whether the Applicant is eligible for a waiver of inadmissibility under section 212(i) of the Act.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible for fraud or misrepresentation, specifically the Applicant acknowledged the use of fraudulent documentation relating to a claimed marital relationship in order to remove conditions of residency. The Applicant confirmed that it was his signature on the petition requesting removal of conditions of residency, wherein the Applicant certified, under penalty of perjury, that the petition and all the evidence submitted with it were true and correct.

At an interview and on appeal, the Applicant claims that his co-worker manufactured the fraudulent documentation, and that the Applicant did not verify any paperwork or submissions, because of it being a "tumultuous" period between the Applicant and his then claimed spouse. In the Applicant's brief, he claims that he located the co-worker and he "intends to provide her declaration under penalty of perjury…that it was [the co-worker] who altered the document without [the Applicant's] knowledge or approval." The Applicant's brief concedes that the Applicant "understands that he should have been more vigilant with his paperwork and is deeply remorseful for his carelessness."

To date, we have not received a supplement to the Applicant's brief containing the referenced declaration from his co-worker. Even assuming that such a declaration is forthcoming and credible, the Applicant is still inadmissible on account of fraud or willful misrepresentation of a material fact relating to claimed bona fides of his prior marriage. The Applicant signified that he knew the contents of his application and supporting documents; that he reviewed and approved the information contained in his application and supporting documents; and that the request for removal of conditions of his residency and other supporting documents were true and correct. 8 CFR section 103.2(a)(2)(the

Applicant's signature "certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct."). See generally, 1 USCIS Policy Manual B.2(A) and (B). Accordingly, upon de novo review, we find that the Applicant is inadmissible on the grounds of fraud or misrepresentation.

B. Extreme Hardship

In support of his waiver application, the Applicant presented his spouse's statement, letters regarding his spouse's psychological and medical conditions and treatment with supporting documentation, evidence of country conditions in Ireland, and letters attesting to the character of the Applicant and to the marriage of the Applicant to his spouse. No additional evidence was submitted on appeal. We acknowledge that, prior to her husband's immigration process, the Applicant's wife was taking melatonin, an anti-stress drink mix, and using meditation and a sleep application as coping mechanisms to manage her stress issues. Then, after the immigration process began, the Applicant's wife sought treatment for her conditions from medical professionals.

However, based on the record, we cannot conclude that, when considered in the aggregate, any hardship, including psychological and medical, that 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 record, in the aggregate, does not establish that the Applicant's spouse will face greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is denied entry into the United States. The hardships the Applicant enumerates, in the aggregate, do not rise to the level of "extreme" as contemplated by statute and case law.

The Applicant must establish that denial of the waiver application would result in extreme hardship to a qualifying relative both upon separation and upon relocation. As the Applicant has not established extreme hardship to his spouse in the event of separation, we cannot conclude he has met this requirement. As such, no purpose would be served in determining whether the Applicant's wife would suffer extreme hardship upon relocation to Ireland, or whether the Applicant merits a waiver as a matter of discretion. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Accordingly, the waiver application remains denied.

CONCLUSION

In proceedings for application for waiver of grounds of inadmissibility under 212(i), the burden of establishing that the application merits approval remains entirely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, the appeal will be dismissed, and the waiver application will remain denied.

ORDER: The appeal is dismissed.