U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6500164

Date: JAN. 21, 2020

Appeal of Chicago, Illinois Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), for unlawful presence, and under 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), for alien smuggling.

The Director of the Chicago, Illinois Field Office denied the application, concluding the record did not establish that the Applicant's alien smuggling should be waived for humanitarian purposes, to assure family unity, or that it is in the public interest, and that a qualifying relative would experience extreme hardship because of her continued inadmissibility for unlawful presence. The Director dismissed the Applicant's motion to reopen for not providing new facts that show a sufficient reason to reopen.

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; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further proceedings consistent with the foregoing analysis.

I. LAW

Any foreign national who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other foreign national to enter or to try to enter the United States in violation of law is inadmissible. Section 212(a)(6)(E) of the Act.

A discretionary waiver is available for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest in the case of an applicant seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the applicant has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the applicant's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law. Section 212(d)(11) of the Act.

A foreign national who has been unlawfully present in the United States for 1 year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i) of the Act. A foreign national is deemed to be unlawfully

present in the United States if present after the expiration of the period of authorized stay or if present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) 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 addition to demonstrating the required extreme hardship under section 212(a)(9)(B)(v) of the Act, the foreign national must also show that U.S. Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver.

II. ANALYSIS

The issue on appeal is whether the Applicant has shown that her alien smuggling inadmissibility should be waived for humanitarian purposes, to assure family unity, or is in the public interest, and that her spouse would experience extreme hardship because of her continued inadmissibility due to unlawful presence. We find that she has met these requirements. Our decision is based on a review of the record, which includes, but is not limited to, statements from the Applicant and her daughters, statements from her spouse's children, financial records, a psychological evaluation, and employment records.

A. Alien Smuggling Waiver

The Applicant was found to be inadmissible under section 212(a)(6)(E) of the Act for alien smuggling. The Applicant does not contest this finding on appeal and the record supports the finding. The record shows the Applicant paid an individual(s) to bring her three daughters to the United States without inspection in 1999. Statements from the Applicant and her daughters reflect that while residing in Mexico, the Applicant and the oldest daughter were being physically abused by the Applicant's ex-spouse, the oldest daughter was sexually abused by him, and the younger daughters were exposed to domestic violence. The Applicant states that she, and subsequently her daughters, departed to the United States to escape this abuse, and her daughters resided with her upon arriving in the United States. She states that she currently visits them several times a year. The Applicant asserts that if she is removed to Mexico, she would be separated from her daughters. Furthermore, she states that two of her daughters have graduated college and all three are gainfully employed. Based on these circumstances, we find that humanitarian and family unity considerations warrant approval of a waiver of her inadmissibility for alien smuggling.

B. Unlawful Presence Waiver

The Applicant was found to be inadmissible under section 212(a)(9)(B)(i) of the Act for unlawful presence. The Applicant does not contest this finding on appeal and the record supports the finding. The Applicant departed the United Stated in January 2012 after accruing unlawful presence from December 2008, when her visitor status expired, until January 2012.

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 the applicant's evidence demonstrates 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 Mexico if the Applicant's waiver application is denied. The Applicant must therefore establish that if she is denied admission, her qualifying relative would experience extreme hardship both upon separation and relocation.

The Applicant asserts that her spouse would experience emotional and physical difficulty without her. The Applicant's spouse details the emotional difficulty he experienced when his ex-spouse committed suicide and he began to raise his three children alone, and states that the Applicant helped him get his life back together and assisted him emotionally. The Applicant states that her stepchildren would experience hardship without her and this would affect her spouse's ability to raise them. The Applicant states that she is the primary caretaker of the Applicant's three children, takes care of the household duties, and cooks for his pre-diabetic daughter. She states that his oldest daughter was diagnosed with bi-polar disorder and her departure could trigger a bipolar episode. The Applicant's stepson also details the assistance and love the Applicant has provided in light of the loss of his mother. Lastly, the Applicant's spouse mentions the emotional difficulty he would experience in seeing his children again lose a mother.

The Applicant also claims her spouse would experience hardship due to his medical issues. The Applicant asserts that her spouse suffers from several medical conditions and has been diagnosed with depression and anxiety. She states that he has issues such as hypertension, diabetes mellitus, glaucoma, and hyperlipidemia, and he takes medication for his issues. The Applicant's spouse details the assistance the Applicant provides to him, including preparing a healthy diet and driving his family as he does not drive due to anxiety. The Applicant's spouse's medical records support the medical and psychological claims.

The Applicant also claims that her spouse would be experience financial hardship without her. She states that she works at a hotel and resort, and her income helps support the family and will eventually assist in buying a home. The Applicant's most recent Form W-2 in the file reflects that she earns about $27,000 and her spouse's Form W-2 reflects income of about $37,000.

Upon separation, the Applicant's spouse would lose the emotional and physical support that the Applicant provides in caring for him and his children, especially in light of their past family experience and his current medical issues. Furthermore, the Applicant earns a significant portion of the family income which supports the claim of financial hardship. Based on the totality of the record, we find that the Applicant's spouse would experience extreme hardship upon separation from the Applicant.

The Applicant asserts that her spouse cannot relocate to Mexico as he has resided in the United States for over 31 years and he has a lack of family and community ties in Mexico. She states that his children, community, and home are in the United States. His oldest child states that she is a student at a local college, her brother plans to attend the same school, and they would not be able to move to Mexico as their lives in Chicago would be disrupted. Furthermore, the Applicant states that due to his age and medical conditions, it would be a hardship to live in Mexico and find employment. In regard to his current employment, his employer states that he has been employed since 1998 as a line operator lead, and he receives medical benefits.

The record reflects that the Applicant's spouse has resided in the United States for the majority of his life and he has minimal ties to Mexico. Upon relocation, he would be separated from at least his oldest child and would be raising his other children in Mexico, and they would face difficulty in Mexico due to conditions there. Specifically, the Applicant is from [redacted] and the Department of State Mexico Travel Advisory, dated December 17, 2019, reflects that violent crime and gang activity are common in parts of the state. In addition, the Applicant would lose his long-term employment, and his lengthy residence outside of Mexico and his medical issues would limit his ability to obtain employment there. Based on the totality of the evidence on record, we find that the Applicant's spouse would experience extreme hardship upon relocation to Mexico.

III. CONCLUSION

As the Director did not make a discretionary finding for the Applicant's inadmissibility for alien smuggling and unlawful presence, we will remand the matter for determination of whether the Applicant also merits a waiver in the exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with this decision.