U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7377562

Date: MAR. 27, 2020

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa and 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).

The Director of the Nebraska Service Center denied the application, noting the Applicant's inadmissibility and concluding that the Applicant had not established that his lawful permanent resident spouse, the only qualifying relative, would suffer extreme hardship were he unable to reside in the United States.

On appeal, the Applicant submits additional evidence and asserts that his spouse would experience extreme hardship if he is denied admission and that he merits a favorable exercise of discretion.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Upon our *de novo* review, as explained below, we will dismiss the appeal.

I. LAW

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)(II) 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(a)(9)(B)(v) 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

Because the Applicant is residing abroad and applying for an immigrant visa, the U.S. Department of State makes the final determination concerning admissibility and eligibility for a visa. Here, a consular officer has determined that the Applicant, a native and citizen of Mexico, is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for accruing unlawful presence in the United States of more than one year prior to his removal from the United States. Thus, the Applicant must seek a waiver of this inadmissibility. The issues on appeal therefore are whether the Applicant has established extreme hardship to a qualifying relative and whether he merits a favorable exercise of discretion. We have considered all the evidence in the record and conclude that the claimed hardships to the Applicant's spouse do not rise to the level of extreme hardship when considered both individually and cumulatively.

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 does not contain a statement from the Applicant's spouse indicating whether she currently intends to remain in the United States or relocate to Mexico if the 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. To show this, the record contains statements from the Applicant, his spouse, and his children; biographic and civil documents; financial documents; academic documents pertaining to his U.S. citizen children; medical and mental health documentation; family photographs; supports letters on behalf of the Applicant; and information about country conditions in Mexico.

The Applicant's spouse contends that she would experience extreme hardship were she to remain in the United States without the Applicant. The Applicant's spouse states that she met the Applicant in 1986 and married him in 2000 and long-term separation from him is causing her emotional hardship, including anxiety, depression, and difficulty sleeping. She also maintains that her youngest daughter suffers from emotional and mental health problems and she needs the Applicant's daily support. The Applicant's spouse further asserts that prior to his departure, the Applicant was the primary breadwinner for the family and while she also worked, her income supplemented the family's finances. Since his removal, she states that she has had to take over his painting business and the work is physically demanding and is taking a toll on her. The Applicant's spouse also asserts that she is maintaining two households since her husband left the United States and such a predicament is causing her financial hardship.

While we acknowledge the contentions in the record that the Applicant's spouse will experience emotional hardship were she to remain in the United States while her spouse continues residing abroad, the record does not contain documentation to establish the severity of this hardship or the effects on her daily life. The Applicant has not submitted any documentation from a treating physician establishing his spouse's current mental health diagnosis, the treatment plan, and the specific hardships she is experiencing as a result of his inadmissibility. Nor has the Applicant submitted documentation on appeal to establish that his spouse and children[1] are not able to travel to Mexico to visit him. While the Applicant has established that his youngest daughter, currently 17 years old, has been receiving mental health services for depression and academic assistance, the record indicates that she has a support system in the United States, including her mother, four siblings, grandfather, her mother's siblings, and extended relatives. The record also indicates she is attending high school and has been issued an occupational skills certificate from [redacted] College. The Applicant has not established that his spouse, the only qualifying relative, is experiencing extreme hardship as a result of having to care for her daughter without his daily presence.

Regarding financial hardship, the Applicant has not submitted any documentation on appeal establishing his and his spouse's current income, expenses, assets, and labilities, in support of the assertion that as a result of his residence abroad, his spouse is experiencing financial hardship. The bills submitted on appeal, without more, do not establish the family's complete financial picture. The Applicant has also not submitted any documentation to establish that he is unable to obtain gainful employment to support himself in Mexico and assist his spouse if needed. The record indicates that the Applicant's spouse has an extensive support network in the United States, namely, her adult children, father, mother and five siblings. The Applicant has not established that they would be unable to assist the Applicant's spouse as needed.

The evidence in the record is insufficient to establish that the spouse's hardships, considered individually and cumulatively, would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship due to separation from the Applicant. The spouse's affidavit indicates generally that the Applicant is emotionally supportive of her, but the record does not establish that continued separation from the Applicant is affecting her ability to function in her daily life. Regarding financial hardship, while we acknowledge the spouse is experiencing some financial difficulty without the Applicant, the record does not demonstrate that she is facing a financial strain that would goes beyond the hardship typically resulting from separation from a spouse. Nor does the record establish that the Applicant's and his spouse's adult children and extended family are unable to assist his spouse as needed during the Applicant's absence.

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 his qualifying relative 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 merits a waiver as a matter of discretion.

[1] The record establishes that the Applicant's and his spouse's U.S. citizen or lawful permanent resident children were born in 1987, 1993, 1996, 1998 and 2002.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. Section 291 of the Act, 8 U.S.C. § 1361. Here, he has not met that burden.

ORDER: The appeal is dismissed.