U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26887383

Date: June 26, 2023

Appeal of Newark, New Jersey Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Colombia, 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 Newark, New Jersey Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (Form I-601), concluding that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation and had not established extreme hardship to a qualifying relative, her U.S. citizen spouse, as required to demonstrate eligibility for the discretionary waiver of that inadmissibility under section 212(i) of the Act. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant asserts her eligibility for the waiver based on extreme hardship on her spouse.

The Applicant bears the burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. See Matter of Christo's Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

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 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 Recinas, 23 I&N Dec. 467 (BIA 2002)). 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 does not contain clear statements from the Applicant and the Applicant's spouse indicating whether the Applicant's spouse intends to remain in the United States or relocate to Columbia if the Applicant's waiver application is denied. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship upon separation and relocation.

The Director denied the waiver application, determining the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act and that she did submit sufficient evidence to establish that her qualifying relative, her U.S. citizen spouse, would suffer extreme hardship, as required. As support for the hardship determination, the Director highlighted that the Applicant's spouse's most recent yearly income was $82,029.00 and that such an income is "sufficient a support a household size of at least eight."

On appeal, the Applicant does not contest her inadmissibility, as described in the Director's decision. Instead, the Applicant submits a brief contending that she established eligibility for the waiver based on extreme hardship to her husband. The Applicant's brief states that the Director failed to consider all the hardship, only addressing financial hardship. The Applicant's brief also asserts that the Director failed to assess the income should the Applicant be removed and that the decision "does not even address the health issues of the children borne of the marriage, the impact their health has on the qualifying relative, . . . and the logical hardships that would result from a denial of the waiver based on the health issues."

At the outset, we acknowledge that the Director's decision reflected an analysis of only financial hardship. We are additionally sympathetic to the Applicant's family's circumstances. However, upon de novo review of the evidence as a whole and considering all the evidence in its totality, the record is insufficient to show that the aggregated hardship of separation would be unusual or atypical to the extent that it rises to the level of extreme hardship. Here, the record fails to demonstrate that the Applicant's spouse would suffer hardship beyond that normally expected upon the inadmissibility or removal of a spouse. As highlighted by the Director, the Applicant's income is adequate for his household. While we acknowledge that the Applicant's husband states "a babysitter or a daycare is something out of budget," no evidence was presented to show that babysitting would be unaffordable

given his income from his construction company or to otherwise meaningfully address the specifics of his financial hardship in the event that the Applicant's waiver application was denied.

We further acknowledge that the Applicant and her spouse's two children (ages 3 and 7) were diagnosed with lead poisoning in 2020. The Applicant's husband's statement says the children "can't eat much because of stomach pain and nausea that they experience often." However, the most recent medical reports in the record show that lead levels reduced to the normal range for both children. The younger child's most recent assessment states she is "alert," "[w]ell nourished and [w]ell developed," and well hydrated. "There are no feeding difficulties." The older child's assessment states, "there are no behavior problems. Nutrition: balanced diet. There are no eating difficulties. The child performs well in school and interacts well with peers." Both children were over the 90th percentile in height and weight. Upon de novo review of the record as a whole, including the financial and medical records, the Applicant has not met her burden of demonstrating her spouse would suffer extreme hardship beyond the normal upon separation.

As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to her spouse both upon separation and relocation to Colombia. As the Applicant has not established extreme hardship to her spouse in the event of separation, we cannot conclude she has met this requirement. Thus, we need not reach the question whether relocation would cause extreme hardship on the qualifying relative, and we reserve that 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"); 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). Because the Applicant has not demonstrated extreme hardship to a qualifying relative if she is denied admission, we need not consider whether she merits a waiver in the exercise of discretion. The waiver application will therefore remain denied.

The burden of establishing eligibility lies with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review of the record in its entirety, we agree with the Director that the Applicant has not sustained that burden. Accordingly, the waiver application remains denied.

ORDER: The appeal is dismissed.