U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20923356

Date: APR. 21, 2022

Appeal of Denver, Colorado 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 to adjust status to that of a lawful permanent resident. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would cause extreme hardship to a qualifying relative, or qualifying relatives.
The Director of the Denver, Colorado Field Office denied the waiver request, concluding that the Applicant did not establish her U.S. citizen spouse would experience extreme hardship if she were refused admission to the United States. On appeal, the Applicant claims she is not inadmissible under section 212(a)(9)(B)(v) and reasserts that her spouse will suffer extreme hardship if the waiver is not granted.

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; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon our *de novo* review, we will dismiss the appeal.

I. LAW

An noncitizen who has been unlawfully present in the United States for more than 180 days but less than one year, voluntarily departed the United States prior to the commencement of proceedings under section 235(b)(1) or section 240 of the Act, and who again seeks admission within three years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i)(I) of the Act.

This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or LPR spouse or parent. 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

The Applicant was found inadmissible under section 212(a)(9)(B)(i) of the Act for unlawful presence. The Applicant stated that she entered the United States in September 2000 with a B2 nonimmigrant visa and departed in December 2001.[1] She returned to the United States in December 2001, and she has not departed since this entry.

On appeal, the Applicant asserts that because more than 3 years have passed since the date of her last departure and reentry in December 2001, she is no longer inadmissible. The Applicant asserts that there is no requirement that the period of inadmissibility be served outside the United States.

However, the terms and intent of section 212(a)(9)(B) of the Act require that an individual be subject to the inadmissibility bar until they have remained outside the United States for the required period. Allowing a foreign national to serve any portion of this period of inadmissibility in the United States while simultaneously accruing additional unlawful presence would reward recidivism and be contrary to the purpose of the enactment of section 212(a)(9) of the Act. *Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006). While she cites to non-precedent AAO decisions and letters from USCIS Chief Counsel to support her assertions, they are not binding and we further note that the facts are not analogous to the Applicant's case. 8 C.F.R. § 103.3(c). In sum, since the Applicant returned to the United States before the period of inadmissibility had ended, she remains inadmissible under section 212(a)(9)(B)(i) of the Act, and requires a waiver under section 212(a)(9)(B)(v) of the Act.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case her U.S. citizen spouse. Section 212(a)(9)(B)(v) of the Act. 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, as guidance, the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both scenarios is not required if an applicant's evidence establishes 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 a 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 spouse would experience extreme hardship both upon separation and relocation.

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[1] The record contains only a copy of the Applicant's Border Crossing Card issued in 2001. If the Applicant's entry in 2001 was pursuant to the Border Crossing Card, she may have unlawful presence of more than one year and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Documentation submitted with the waiver application includes but is not limited to statements from the Applicant and her spouse, a psychological evaluation of her spouse, medical records, financial records, and statements from other family members. The Applicant contends that her spouse would experience medical, financial, and emotional hardship upon separation. The Applicant asserts that her children would also suffer upon separation. We may consider the hardship to the Applicant's children and siblings only as it affects their qualifying relative parents. *See* 9 *USCIS Policy Manual*, *supra*, at B.4(D)(2).

Regarding medical hardship, the Applicant submits medical records of her spouse. The records are extensive, covering many years of various treatments and appointments. The most recent records indicate that the Applicant's spouse is experiencing back pain and was advised to take over the counter pain medication and to follow up if symptoms persist. The records include test results monitoring for diabetes, but the results indicate no abnormal readings. Otherwise, the most recent records do not indicate that the Applicant's spouse currently suffers from any serious illness. Medical records from the Applicant's children are also included; while the records are thorough, the records do not establish that the Applicant's children currently suffer from severe illnesses which could affect the Applicant's spouse.

Considering financial hardship, the Applicant submits financial records including the Applicant's spouse's pay stubs, a confirmation of the Applicant's rent expenses, and an electric bill. The Applicant claims that their obligations can be met only with the combined income of the couple. The record, however, lacks sufficient documentation, such as a monthly budget, tax returns, or credit card statements, to form a complete picture of the family's finances.

With respect to emotional or psychological hardship, the Applicant submits a psychological evaluation of the Applicant's spouse. The therapist diagnoses the Applicant's spouse with Adjustment Disorder with Mixed Anxiety and Depressed mood, chronic type. The therapist notes that the Applicant's spouse's recent change of job, the pandemic, and the possibility of becoming separated from the Applicant due to her inadmissibility seems to be at the root of this diagnosis. The evaluation notes that the symptoms of adjustment disorders, such as the one the Applicant's spouse has been diagnosed with, should not last longer than six months after the termination of the stressor or its consequences. In sum, the evidence provided does not establish extreme hardship.

Although we recognize that the Applicant's spouse may face some hardships upon separation, based on the record, we cannot conclude that when considered in the aggregate, the hardship would go beyond the common results of separation from a loved one and rise to the level of extreme hardship. There is little evidence presented here that would indicate that separation from the Applicant would cause the Applicant's spouse financial hardship, as we lack a comprehensive picture of the family's finances. Similarly, the evidence presented does not establish that the Applicant's spouse would experience medical-related hardship, as the records indicate routine medical concerns and no acute conditions that require the Applicant's assistance which would result in extreme hardship if separated the Applicant. Finally, the evidence provided by the psychological evaluation of emotional or psychological hardship, to which we are sympathetic, do not establish extreme hardship. Although we acknowledge that he has been diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed mood, chronic type, the record does not show that the Applicant's spouse's situation, or the symptoms he is experiencing, are unique or atypical to be considered extreme hardship. The record does not show that he has any physical or mental health issues that affect his ability to work or carry out other activities, or that he requires the Applicant's assistance as a result. Even considering all of the evidence in its totality, the record remains insufficient to show that the Applicant's spouse's claimed financial, mental, and physical hardships would rise to the level of extreme hardship, if he remains in the United States while the Applicant returns to live abroad due to her inadmissibility.

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 Mexico. As the Applicant has not established extreme hardship to her spouse in the event of separation, we cannot conclude she has met this requirement. 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.

ORDER: The appeal is dismissed.