U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18329656

Date: MAR. 01, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of Mexico currently residing in Mexico, has applied for an immigrant visa. A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility.

The U.S. Department of State (DOS) found the Applicant inadmissible for a crime involving moral turpitude, section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I); human smuggling, section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i); fraud or misrepresentation, section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i); and unlawful presence, section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

The Applicant then applied for waivers of inadmissibility under section 212(h)(1)(B) of the Act, 8 U.S.C. § 1182(h)(1)(B); section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11); section 212(i) of the Act, 8 U.S.C. § 1182(i); and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Director of the Nebraska Service Center denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's qualifying relative, her U.S. citizen husband, would experience extreme hardship if the waivers were denied.

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. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Any noncitizen who has been convicted of, admits to having committed, or admits to committing acts which constitute the essential elements of a crime of moral turpitude (other than a purely political offense), or an attempt or a conspiracy to commit such a crime, is inadmissible. Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A). Two discretionary waivers are available for this ground of inadmissibility. First, the ground may be waived if the activities occurred more than 15 years before the date of the application, if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and if the noncitizen has been rehabilitated. Section

212(h)(1)(A) of the Act, 8 U.S.C. § 1182(h)(1)(A). Second, a discretionary waiver is available if denying admission to the noncitizen would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act, 8 U.S.C. § 1182(h)(1)(B). However, if the noncitizen's inadmissibility is for a violent or dangerous crime, U.S. Citizenship and Immigration Services (USCIS) may not grant this second waiver unless the noncitizen also shows "extraordinary circumstances," with the final stipulation that even if such a showing is made, the waiver may still be denied because of the gravity of the offense. 8 C.F.R. § 212.7(d).

Any noncitizen who has knowingly encouraged, induced, assisted, abetted, or aided another noncitizen to enter or try to enter the United States in violation of the law is inadmissible. Section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E). This inadmissibility may be waived under section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), if the person who was smuggled into the United States was the noncitizen's spouse, parent, son, or daughter at the time of the offense and a waiver is merited for humanitarian purposes, to assure family unity, or the public interest.

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. There is a discretionary waiver of this ground of 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.

A noncitizen who has been unlawfully present in the United States for one 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, 8 U.S.C. § 1182(a)(9)(B)(i)(II). This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a spouse or parent who is a U.S. citizen or lawful permanent resident. Section 212(a)(9)(B)(v) of the Act.

II. ANALYSIS

The issue on appeal is whether the Applicant's qualifying U.S. relative would experience extreme hardship if the Applicant's waiver petition were denied. The Applicant does not contest the findings of inadmissibility for unlawful presence or for fraud or misrepresentation.[1] Both of these grounds of inadmissibility may be waived if denial of admission would result in extreme hardship to a United States citizen or legal permanent resident spouse or parent. *See* sections 212(i) and 212(a)(9)(B)(v) of the Act. In this instance, the Applicant's qualifying relative is her U.S. citizen husband.

[1] The Applicant does contest DOS's finding of inadmissibility for a crime of moral turpitude. However, because the other issues are dispositive, we need not reach this issue and hereby reserve it. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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-*, 16 I&N Dec. 516, 526 n. 7 (BIA 2015) (declining to reach alternative issues on appeal where a petitioner or applicant is otherwise ineligible). Similarly, the Applicant asserts that she is eligible for a waiver of inadmissibility for human smuggling under section 212(d)(11) of the Act. Because the other issues are dispositive, we need not reach this issue and hereby reserve it.

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. 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/legal-resources/policy-memoranda. In the present case, the record is unclear whether the Applicant's spouse would remain in the United States or relocate to Mexico if the Applicant's waiver application is denied.[2] The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

The Director reviewed the spouse's asserted financial, emotional, and medical hardships and determined that they do not rise to the level of extreme hardship, either individually or in the aggregate, in the event of relocation or separation. On appeal, the Applicant states that her qualifying spouse will experience extreme emotional, medical, and economic hardship if her waiver application is denied. In support, the Applicant submits a brief and no additional evidence.[3]

Although we are sympathetic to the family's circumstances, we conclude that if the Applicant's spouse remains in the United States without the Applicant, the record is insufficient to show that his hardship would rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

Regarding emotional and medical hardship, the record includes a psychological evaluation prepared by a licensed clinical social worker in March 2020. The report described the symptoms the Applicant's spouse was experiencing, including crying spells, physical pain, increased heart rate, inability to relax, dizziness, faint spells, shortness of breath, low energy, and sleep disruption. It further diagnosed him with Major Depressive Disorder with Anxiety, moderate in severity, causing "a level of psychological impairment in the mild end of the moderate range."

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[2] The Applicant's counsel states on appeal that "whether [the Applicant's husband] decides to reunite with his wife in Mexico, or remain here with his children, he will suffer extreme hardship as both options result in his family being separated."

[3] It is noted that the brief submitted on appeal includes references to various exhibits. However, these exhibits were not submitted to the record and, therefore, they cannot be addressed.

While the Applicant's spouse's evaluator stated that "his emotional state clearly reaches the level of a clinically significant and diagnosable mental disorder," the evaluator did not establish how the spouse's symptoms have affected his ability to work or carry out other day-to-day activities in ways that are more extreme than the hardship typically experienced upon removal. Instead, the evidence indicates that the Applicant's spouse continues to work and only takes Motrin for occasional pain. There is also insufficient evidence that he requires the Applicant's assistance as a result of his symptoms.

On appeal, the Applicant has asked us to consider hardships that the qualifying spouse may experience that are the result of hardships to other non-qualifying relatives, including the Applicant's children and grandchildren. Regarding the Applicant's granddaughter, we acknowledge that she has juvenile rheumatoid arthritis and that her mother, the Applicant's daughter, has been diagnosed with post-traumatic stress disorder as a result of the Applicant's inadmissibility. However, their hardships may only be considered to the extent that they affect the Applicant's spouse, who is the qualifying relative in this case. The evidence does not specifically indicate how, in the Applicant's absence, the medical, emotional, or other hardships of non-qualifying relatives would cause her husband extreme hardship.

The Applicant also claims on appeal that her husband will experience extreme economic hardship if her waiver application is denied. The record indicates that the Applicant earned about a third of the income in the household she shared with her husband, and she performed housework, as well. The Applicant asserts that she has not been able to find work in Mexico, causing concern about whether she will need financial support from her husband to remain there and whether that would cause him financial difficulties.[4] However, the record indicates that the Applicant and her husband have two adult children, and the Applicant also has an adult daughter from a previous relationship, all of whom live in the same area as the Applicant's spouse. The record does not indicate that the Applicant's family members in the United States are unable or unwilling to assist the Applicant's spouse as needed.

We acknowledge the difficulties encountered by the Applicant's husband as a result of the commute between [redacted] and Mexico that he must make to visit her. However, considering all of the evidence in its totality, the record remains insufficient to show that the Applicant's spouse's claimed emotional, medical, and financial hardships will be unique or atypical, rising to the level of extreme hardship, if he remains in the United States separated from the Applicant.

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 upon relocation to Mexico. As the Applicant has not established extreme hardship to her spouse as a result of separation, we cannot conclude that 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

[4] We acknowledge that counsel's letter submitted on appeal refers to various evidence and exhibits regarding dangerous living conditions in Mexico. However, this evidence is not included with the appeal. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. The record lacks sufficient evidence demonstrating that the Applicant would likely be a target of crime and violence in Mexico and, therefore, does not establish that concern over crime in Mexico would cause her spouse extreme hardship.

exercise of discretion or whether she qualifies for waivers of her other inadmissibility grounds. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.