U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33310488

Date: SEP. 05, 2024

Appeal of Nebraska Service Center Decision

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

The Applicant, a native and citizen of Brazil currently residing in that country, 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 Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Nebraska Service Center denied the application, concluding that the record did not establish that the Applicant's qualifying relative would experience extreme hardship if she were denied admission to the United States. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Applicant asserts that she has met her burden of proof to establish extreme hardship to her U.S. citizen spouse.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

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.

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 Department of State determined that the Applicant is inadmissible to the United States for fraud or misrepresentation because she misrepresented her intent to enter as visitor to a U.S. Customs and Border Protection officer in 2006 based on evidence that she obtained employment within 90 days of entry. The issues on appeal are whether the Applicant has established extreme hardship to her qualifying relative and, if so, whether she merits a waiver as a matter of discretion.

We have reviewed the entire record and conclude that it is insufficient to show that the individual and cumulative hardships to the Applicant's U.S. citizen spouse would rise to the level of extreme if the Applicant is denied admission.

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 generally* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual (providing guidance on 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 Gonzalez Recinas*, 23 I&N Dec. 467 (BIA 2002)). The applicant may meet this burden by submitting a statement from the qualifying relative or relatives certifying under penalty of perjury that the qualifying relative or relatives would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. *See id.* Here, the record contains a clear statement from the Applicant's spouse indicating that he does not want to live in Brazil due to the economic and political situation in that country. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship upon separation.

In her personal statement at the time of filing the Applicant stated that she did not intend to lie to the immigration official at the time of her entry, described her relationship with her ex-spouse, described how she met her current spouse and indicated that they could not live in Brazil together due to the "political, economic and social" situation in that country. The Applicant's spouse provided a statement in which he described his relationship with the Applicant and her children, described the anxiety he feels due to the distance between them, and provided some information about his ongoing heart condition. The Applicant also provided evidence of employment for both her and her spouse, letters of support from individuals who know her and her spouse, medical records for her spouse and a psychological assessment.

The Director determined that the evidence provided was insufficient and issued a request for evidence. In response, the Applicant provided a second letter describing how living apart from her spouse has

affected herself and her daughters. She also provided additional psychological evaluations for herself, her spouse, and her daughter discussing the emotional toll that being separated has caused for their family. The psychological evaluations diagnosed the Applicant's spouse with major depressive disorder and provided details regarding how their separation has had an effect on his emotional well-being. Lastly, she provided additional character affidavits and a statement from her daughter. The Director determined that the Petitioner had not established that her qualifying relative, her U.S. citizen spouse, would experience extreme financial, medical, or emotional hardship if she were denied admission.

On appeal, the Petitioner argues, for the first time, that she is not inadmissible and that she has met her burden to establish that her spouse would experience extreme hardship. In support of her argument she resubmits her spouse's psychological evaluations and an article regarding aging and the risk of stroke. We adopt and affirm the Director's decision with the comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

The Applicant argues on appeal that she never intended to misrepresent her intentions in entering the United States and that the consular officer erred in finding her inadmissible. The consular officer determined that the Applicant's actions following her entry into the United States created a rebuttable presumption that she was an intending immigrant at the time of entry and she therefore misrepresented her true intentions in seeking admission by presenting herself as a visitor. Other than her own statement, the Applicant has provided no evidence to support her assertion that her sole intent was to visit the United States at the time of her entry. Because the Applicant is residing abroad and applying for an immigrant visa, the U.S. Department of State makes the final determination concerning eligibility for a visa. Thus, as a result of the Consular Officer's finding of inadmissibility for fraud and misrepresentation, the Applicant requires a waiver under section 212(i) of the Act.

The Applicant also argues that the Director did not fully consider the full implications of denial of the waiver application. The Applicant cites to multiple unpublished AAO decisions where we reversed the decision of the Director based, in part, on findings related to the mental health of the qualifying relative. These decisions were not published as precedent and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). The Applicant is required to establish that she is eligible for the requested waiver. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. In the present case, the Applicant has not claimed financial hardship but focuses on her spouse's medical condition and his diagnosis of major depressive disorder related to her immigration status. The Director correctly evaluated the available evidence and determined that the Applicant had not met her burden of proof in establishing that her U.S. citizen spouse would experience extreme hardship if she were denied admission to the United States.

The Applicant's attorney states that since her spouse's heart condition began at a young age she has established extreme hardship. This argument is unpersuasive. Diagnosis of a medical condition at a young age is not, by itself, indicative of extreme hardship. The Applicant's spouse has lived for more than 20 years with his present medical condition and there is no medical documentation in the record

to demonstrate that his heart condition has worsened or that the Applicant's presence would have any effect on her spouse's medical condition. Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

After a complete review of the record, the totality of the evidence remains insufficient to establish that the emotional, medical, and financial hardships of the Applicant's spouse, considered individually and cumulatively, would exceed those which are usual or expected if he remains in the United States and is separated from the Applicant. Thus, the Applicant has not shown that her spouse would experience extreme hardship. Because the Applicant has not demonstrated extreme hardship to her qualifying relative, her U.S. citizen spouse, upon separation, we need not consider whether the Applicant merits a waiver in the exercise of discretion and, therefore, 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). The waiver application will remain denied.

ORDER: The appeal is dismissed.