U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33530411

Date: SEP. 05, 2024

Appeal of San Fernando Valley, California Field Office Decision

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

The Applicant has applied to adjust status to that of a lawful permanent resident (LPR) and 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 San Fernando Valley, California Field Office denied the application, concluding that the record did not establish that the Applicant's qualifying relative would experience extreme hardship if her application is denied. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Any foreign national 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 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(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).

Section 204(l) of the Act, 8 U.S.C. § 1154(l) provides that an applicant who immediately prior to the death of a qualifying relative was the beneficiary of a pending or approved petition for classification under section 203(a) of the Act who resided in the United States at the time of the death of the qualifying relative, and who continues to reside in the United States shall have such petition based upon a family relationship and any related applications, adjudicated notwithstanding the death of the qualifying relative, unless the Secretary of Homeland Security determines, in the unreviewable discretion of the Secretary, that approval would not be in the public interest.

II. ANALYSIS

The issue on appeal is whether the Applicant's qualifying relative would experience extreme hardship if the waiver were denied. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record, which establishes that she misrepresented her marital status when applying for a nonimmigrant visa. The Applicant argues that the Director's decision was incorrect because the Director did not consider all the evidence submitted with the waiver application related to her qualifying relatives' hardship claims. Upon review, the record reflects that the Director erred by giving little weight to the relevant documentation of significant health challenges related to the claimed hardship.

A. Extreme Hardship to Qualifying Relative Established

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case her U.S. citizen father. 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 Gonzalez 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 indicates that the Applicant's father does not intend to relocate to Armenia if the waiver is denied. The Applicant must therefore establish that her father would experience extreme hardship only upon separation.

The Director concluded that the Applicant had not established extreme hardship to her U.S. citizen father. According to the evidence provided with the request for a waiver, the Applicant's father is currently diagnosed with multiple serious medical conditions including uncontrolled diabetes and congestive heart failure. The Applicant's father claims that he requires his daughter's presence to keep track of his medications, to assist in his day-to-day activities, regulate his diet and to ensure that

he remains on oxygen while sleeping. The Applicant further provided a long list of medications and general information related to Armenian human rights.

On appeal, the Applicant argues that the Director did not appropriately evaluate the medical documentation provided regarding the health of the Applicant's father and applied an incorrect standard of proof. The Applicant also provided an updated progress report for her father's various health conditions. After review of the medical documentation and the Applicant's arguments on appeal, we conclude that the Applicant has established that her U.S. citizen father would experience extreme hardship upon separation.

The medical documentation provided by the Applicant demonstrates that her father's health requires constant and consistent care and attention. The list of medications and the report of a recent heart procedure underscore the seriousness of her father's condition. In addition, to the medical documentation the Applicant and her father both indicate in their personal statements that she is her father's primary caregiver. The Applicant's father further states that his daughter has filled the emotional hole left when his spouse passed away in 2019 and that separation would cause a severe emotional hardship that could worsen his health condition. Accordingly, we will remand the matter to the Director for consideration of whether the Applicant merits approval of the waiver application as a matter of discretion.

B. Alternate Basis for a Finding of Extreme Hardship

Although not raised on appeal or addressed by the Director, the Applicant has established extreme hardship as a matter of USCIS policy. When an issue or claim is properly before us, we are not limited to the particular legal theories advanced by the filing party. Instead, we retain the independent authority to identify and apply the proper construction of governing law. *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991); *see also Monsonyem v. Garland*, 36 F.4th 639, 642 (5th Cir. 2022) (applying this concept to criminal immigration statutes); *Colin-Villavicencio v. Garland*, No. 22-507, 2023 WL 11878289, at *6 (9th Cir. July 23, 2024). *See also Harrow v. Dep't of Def.*, 601 U.S. 480, 484 (2024) (citing *United States v. Wong*, 575 U.S. 402, 409 (2015) and finding an appellate body must enforce the law or regulation, even if no party has raised it).

The Applicant's mother was the petitioner on her family-based visa petition in 2013. In 2019, after the petition's approval but prior to filing for adjustment of status, the Applicant's mother passed away. The Applicant requested humanitarian reinstatement of her mother's petition under section 204(l) of the Act in June 2023. USCIS granted that request the same month and sent a notice of affirmation regarding the Applicant's continuing eligibility for her immigrant visa based on humanitarian reinstatement under section 204(l) of the Act. The Applicant is currently seeking adjustment of status based on the petition filed by her mother. Pursuant to USCIS policy, the fact that the petitioner, a qualifying relative, has died will be "deemed to be the functional equivalent of a finding of extreme hardship...." 9 *USCIS Policy Manual* b.4, http://www.uscis.gov/policy-manual. Consequently, a review of the record reflects that the Applicant has established extreme hardship as a matter of USCIS policy.

As the Applicant has established extreme hardship to her U.S. citizen father and, in the alternative, as a matter of USCIS policy, we will remand the matter to the Director to determine if the waiver should be approved in the exercise of discretion.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.