U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33411973

Date: SEPT. 05, 2024

Appeal of Fort Myers, Florida Field Office Decision

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

The Applicant, a native and citizen of Colombia, seeks to adjust status to that of a lawful permanent resident (LPR), which requires him to demonstrate that he is admissible to the United States or eligible for a waiver of inadmissibility. Section 245(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(a)(2).

The Director of the Fort Myers, Florida Field Office found the Applicant inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The Applicant then sought a discretionary waiver of inadmissibility under section 212(i) of the Act, which the Director denied, concluding that the evidence did not establish the requisite extreme hardship to the Applicant's qualifying relative, his U.S. citizen spouse, if the Applicant is refused admission. On appeal, the Applicant submits a brief with no additional evidence and maintains that his spouse would experience extreme hardship if he were denied admission.

The Applicant has 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). 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. This inadmissibility ground may be waived if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act. If the noncitizen establishes the requisite extreme hardship, they must also demonstrate that their waiver request warrants a favorable exercise of discretion. *Id.*

Whether a 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). While some degree of hardship to qualifying relatives is present in most cases, the hardship must

exceed that which is usual or expected for it to be considered "extreme." *See, e.g.*, *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). Establishing extreme hardship under both these scenarios is not required if the evidence shows 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.* Here, the Applicant's spouse indicates that because of conditions in Colombia, combined with medical and financial concerns she cannot relocate. Thus, the Applicant focuses the claims of hardship to his spouse on the hardship that would occur in the event he and his spouse were separated.

I. ANALYSIS

The Applicant admits, and the record shows, he is inadmissible under the Act for fraud or willful misrepresentation for having used a photo-substituted visa and passport to enter the United States. Therefore, the only issue before us on appeal is whether he has established extreme hardship to his U.S. citizen spouse if the 212(i) waiver request is denied.

Regarding hardship upon separation, the Director found that the evidence of the claimed hardships to the Applicant's spouse did not demonstrate that she would experience hardship rising to the level of extreme if the Applicant is denied admission. Specifically, he concluded that no claims of financial hardship were made and the evidence of her medical concerns, including evidence of her depression and anxiety, did not rise above what would normally be expected upon separation from a spouse. On appeal, the Applicant challenges this determination, indicating that his spouse's pre-existing mental and physical health concerns are in danger of becoming significantly worse causing severe decline upon separation because he is a significant source of emotional support in his spouse's life. He emphasizes how his spouse has suffered from depression since adolescents because of childhood neglect and her father's alcoholism. However, the record also indicates, from a doctor's report in 2021, that the spouse's depression and anxiety had dissipated and was under control with the use of a prescription medication. Notes from a doctor's visit stated that the spouse reported feeling well. In addition, the psychological evaluation reported that the spouse's depression and anxiety were being triggered by the Applicant's uncertain immigration situation and did not emphasize a concern with long standing depression and anxiety. Again, no new hardship evidence was submitted on appeal and a review of the record does not support a finding that the spouse's mental or physical health symptoms will become significantly worse as to rise to the level of extreme hardship upon separation.

Here, the totality of the evidence of claimed hardships upon separation, considered individually and cumulatively, do not exceed the common results of separation due to deportation to constitute extreme hardship. *Id.* at 630-31, 633; *Matter of J-J-G-*, 27 I&N Dec. 808, 813 (BIA 2020) (holding that economic detriment and common emotional hardships also generally do not support a finding of a higher degree requisite hardship in the cancellation of removal context) (citation omitted). As the Applicant has not established extreme hardship in the event of separation, we cannot conclude that the requisite extreme hardship would result from denial of his waiver application.

Furthermore, the Director also explained how the plausibility of the spouse's statements indicating she could not relocate to Colombia, thus avoiding separation, were compromised by the spouse's upbringing and travel history. The Director stated that because the record indicates the spouse was born and raised in Colombia, that her mother still lives there, and her travel history shows she consistently travelled to Colombia from 2010 to the present, her reasons for not being able to relocate appeared implausible. For instance, the spouse stated that she would be unable to move to Colombia because it is unsafe, has a high poverty rate, and she has financial and medical concerns. Alternatively, the record shows the spouse, who is 57 years old, immigrated to the United States as an adult and still has family ties to Colombia. The Director also listed travel dates for the Applicant's spouse, showing she was in Colombia for three weeks to one month in 2010, 2012, 2014 (two times), 2016, 2017, 2018, 2019, 2022, and 2023. On appeal, this concern was not addressed, but to state that visiting her spouse in Colombia was not the same as residing together.

Moreover, although we acknowledge the spouse's history of employment in the United States starting in 1998 in the cleaning department of a healthcare facility and her medical treatment (for depression, anxiety, high blood pressure, and a thyroid imbalance) which includes two prescription medications and doctor's visits every six months, she has not shown that employment in her field or medical treatment would not be accessible to her in Colombia. Thus, the Director's concerns regarding the credibility of her intent to not relocate remain.

The waiver application therefore will remain denied.

ORDER: The appeal is dismissed.