U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33214004

Date: SEPT. 16, 2024

Appeal of Los Angeles, California Field Office Decision

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

The Director of the Los Angeles, California Field Office denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), concluding that he had not established extreme hardship to his U.S. citizen spouse as required to demonstrate eligibility for a discretionary waiver under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). On appeal, the Applicant asserts his eligibility for the waiver, claiming that his U.S. citizen spouse and children, in the aggregate, would suffer extreme hardship if the waiver is denied. He states that his spouse's hardship was not presented to the Director in full because the Applicant was waiting to respond to an expected request for evidence from the Director, based on what transpired at the Applicant's interview. Furthermore, the Applicant provides evidence that he diligently made multiple inquiries for the expected request for evidence, which he never received. The matter is now before us on appeal. 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.

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. If the noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. Id.

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. See generally 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda. Demonstrating extreme hardship under both 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. 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 is not clear whether the Applicant's spouse would remain in the United States if the Applicant's waiver application is denied. The Applicant must, therefore, establish that if he is denied admission, his spouse would experience extreme hardship upon both separation and relocation.

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) provides: "If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS." Therefore, the Director is not required to issue an RFE in every potentially deniable case. The regulation at 8 C.F.R. § 103.2(b)(8) does not require solicitation of further documentation if the missing or inadequate evidence is included as initial evidence within the regulation governing the classification or the form instructions.

The USCIS Policy Manual at 1 USCIS Policy Manual, E.6, https://www.uscis.gov/policymanual, states: "Generally, USCIS issues written notices in the form of an RFE or NOID to request missing initial or additional evidence from benefit requestors. However, USCIS has the discretion to deny a benefit request without issuing an RFE or NOID." 1 USCIS Policy Manual, supra, E.6(F).

ANALYSIS

The Director determined the Applicant, a citizen of Mexico, was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact, and the Applicant, who is seeking adjustment of status, therefore filed this Form I-601 to waive his inadmissibility. In denying the Form I-601, the Director determined that the Applicant was not eligible for a waiver under section 212(i) of the Act because he had not established extreme hardship to his U.S. citizen spouse with the presented evidence.

In denying the waiver, the Director stated that the waiver application "did not include sufficient evidence (such as financial records, expert opinions, prescriptions, medical reports, past and current treatment records from a physician(s) to corroborate medical conditions, the duration and prognosis

of them and any related treatment plans(s))..." The Director noted that he considered the statements in support of hardship, including the attorney's letter, but that evidence was insufficient. The Director found that, in the aggregate, the Applicant had not met his burden to establish that hardship to his qualifying relative exceeded that which is usual or expected.

The Applicant presents new evidence on appeal including:

- An updated personal statement of the Applicant's spouse describing financial and psychological hardship if she is separated from her husband, should he be removed from the United States.
- An updated psychological report of the spouse diagnosing her with generalized anxiety disorder and severe major depressive disorder.
- Letters from the Applicant's three children describing the Applicant's good moral character and concern for their mother should their father be removed from the United States.
- Documentation of the Applicant's spouse's medications and diagnoses.
- Medical literature describing the various diagnoses and medications of the Applicant's spouse.

On appeal, the Applicant does not contest the inadmissibility finding. The Applicant submits a brief and states that at his interview, the interviewer personally served him with a "Notice of Interview Results" which stated that his case would be held for review, and USCIS would contact him "[s]hould further information or documents be required" to adjudicate his case. Furthermore, the Applicant made two online inquiries "regarding the nondelivery of the RFE [request for evidence] notice for the Applicant's Form I-601, in addition to calling the USCIS Contact Center." On appeal, the Applicant states that he never received a request for additional evidence to adjudicate the waiver application despite being hand-delivered a written notice stating that USCIS would contact him should further information or document be required and despite making several written and telephonic inquiries to USCIS regarding whether further documentation was needed.

We acknowledge that the USCIS Policy Manual encourages agency officers to issue RFEs and NOIDs, but it does not mandate it. However, in this case, the Director did provide written notice that the Applicant would be contacted should further information or documentation be required, and USCIS records do not indicate that an RFE was issued. In addition, the Applicant was diligent in repeatedly making written and telephonic inquiries regarding whether further information or documentation was required. The Applicant was made aware of the Director's basis for denial through the Director's decision, and has provided additional evidence and information to answer those eligibility concerns with the present appeal.

Upon de novo review, we note that the Director has not been afforded the opportunity to consider new evidence presented on appeal in connection with the Applicant's spouse. Based on the foregoing, we will remand the matter to the Director to consider the aggregate hardship on the Applicant's qualifying relative, his spouse, including hardship presented on appeal in the new evidence.

Should the Director find that the Applicant has established extreme hardship, in the aggregate, to his spouse, the Director shall evaluate whether the Applicant warrants a favorable exercise of discretion,

taking into consideration such extreme hardship to the Applicant's parents and other discretionary factors. See 9 USCIS Policy Manual 5.A, https://www.uscis.gov/policymanual (providing a non-exhaustive list of factors that may be relevant to the discretionary analysis).

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