U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27184877

Date: SEP. 5, 2023

Appeal of Atlanta, Georgia Field Office Decision

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

The Applicant, a native and citizen of Honduras currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). 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 a crime involving moral turpitude (CIMT) and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h). 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 Atlanta, Georgia Field Office denied the application, concluding that that the Applicant had not established extreme hardship to her qualifying LPR spouse. The matter is now before us on appeal. 8 C.F.R. § 103.3. On Appeal, the Applicant argues that the Director did not consider the evidence of hardship to her two U.S. citizen children.

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.

Any noncitizen convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a CIMT (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. Section 212(a)(2)(A)(i) of the Act.

Noncitizens who are inadmissible under section 212(a)(2)(A)(i) of the Act may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. Where the activities resulting in inadmissibility occurred more than 15 years ago, a discretionary waiver is available if admission to the United States would not be contrary to the national welfare, safety, or security of the United States and the noncitizen has been rehabilitated. Section 212(h)(1)(A) of the Act. A discretionary waiver is also available if denial of admission would result in extreme hardship to the noncitizen's U.S. citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act. A

noncitizen who establishes statutory eligibility for a waiver under section 212(h)(1)(A) or (B) of the Act must also demonstrate that USCIS should favorably exercise its discretion and grant the waiver.

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). 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).

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/policy-manual. An applicant may submit evidence demonstrating which of the scenarios would result from a denial of admission and may establish extreme hardship to one or more qualifying relatives by showing that either relocation or separation would result in extreme hardship. *See id.* An 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.*

The Director determined that the Applicant was inadmissible as a result of her [redacted] 2011 conviction for identity theft for events that occurred from [redacted] 2008. Since 15 years have not passed since the date of the Applicant's last conduct that rendered her inadmissible under section 212(a)(2)(A)(i) of the Act, she is not eligible for a waiver under section 212(h)(1)(A) of the Act. The Applicant therefore requested a waiver under section 212(h)(1)(B) of the Act indicating that her LPR spouse and U.S. citizen children would experience extreme hardship if she were denied admission to the United States.

The Applicant provided evidence of extreme hardship including statements from her children, spouse and third parties, a mental health evaluation for her spouse, and country conditions material for Honduras. The Director determined that the evidence did not establish that the Applicant's LPR spouse would experience hardship that is over and above the normal consequences of denial of admission to the United States and denied the waiver request.

On appeal, the Applicant states that the Director erred by not analyzing the extreme hardship to her U.S. citizen children or considering the extreme hardship to her spouse and children in the aggregate. Based on the Director's analysis of the extreme hardship evidence, it does not appear that the Director considered the extreme hardship claim of the Applicant's U.S. citizen children. In their letters to the Director, the Applicant's children provide details of how she has influenced their lives and the impact separation would have on them. While the letters provide limited detail regarding any prospective extreme hardship, the Director does not appear to have considered the effects of separation on the Applicant's U.S. citizen children or assessed, in the aggregate, the extreme hardship of all three qualifying relatives. *See* 9 *USCIS Policy Manual* B.4(E), https://www.uscis.gov/policy-manual. ([I]f there is no single qualifying relative whose hardship alone is severe enough to be found "extreme,"

the extreme hardship standard would be met if the combination of hardships to 2 or more qualifying relatives in the aggregate rises to the level of extreme hardship) (footnotes omitted).

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). Therefore, we will remand the matter for consideration, in the first instance, of the extreme hardship to the Applicant's U.S. citizen children individually and in the aggregate between all three qualifying relatives per USCIS policy.

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