U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23036552

Date: NOV. 15, 2022

Appeal of Orlando Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

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), for misrepresentation of a material fact. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The Orlando Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility. The Director concluded the Applicant did not establish extreme hardship to his U.S. citizen spouse, his only qualifying relative, nor did he demonstrate that discretion should be exercised in his favor.

The matter is now before us on appeal. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *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 sustain the appeal.

I. LAW

A 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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility ground if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the foreign national. Section 212(i) of the Act. If the foreign national 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).

Once the foreign national demonstrates the requisite extreme hardship, they must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N 296, 299 (BIA 1996). We must balance the adverse factors evidencing an applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted).

The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country while in compliance with our immigration laws (particularly where residency began at a young age), evidence of hardship to the foreign national and their family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

II. ANALYSIS

The Applicant attempted to enter the United States utilizing falsified documentation in 1993 but withdrew their application for admission when confronted about the fraudulent passport and subsequently returned to their home country. Later that same year, the Applicant entered the United States without being inspected, admitted, or paroled. The Applicant is eligible for the statutory provision that overcomes the fact that a foreign national was not inspected, admitted, or paroled into the country. *See* section 245(i) of the Act.

The Applicant concurrently filed his waiver application and a Form I-485, Application to Register Permanent Residence or Adjust Status. The Director denied the waiver application because he did not establish his LPR spouse (R-)[1] would suffer extreme hardship if he were denied admission as an LPR, and because the favorable factors did not outweigh the adverse ones as a matter of discretion. On the same date, the Director denied the Form I-485 because the Applicant's waiver application was denied and he remained inadmissible to the United States under section 212(a)(6)(C)(i).[2]

[1] We utilize initials to protect the identity of relevant parties.

[2] The Director's decision on the Form I-485 also indicated the Applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act. However, that inadmissibility ground was not discussed in the waiver application denial and it appears to have been an error.

Within the appeal, the Applicant claims the Director erred by not giving appropriate attention to R-'s psychological assessments, by not aggregately considering all the hardship claims, and by not taking into account all of the relevant positive factors in their discretionary analysis.

We begin with the psychological assessments. The Applicant submitted two assessments: the first from May 2020 and the second from December 2021. The first assessment offered the clinician's diagnosis of Adjustment Disorder with Mixed Anxiety and Depressive Mood and Unspecified Anxiety Disorder. The clinician noted the presence of cognitive impairment with significant memory problems, and that overall intellectual functioning was within the borderline range of functioning. The assessment also noted that R- possesses a driver's license but has not driven since 2005 when she was in a vehicular accident and she is now afraid to drive.

Turning to the second assessment, the clinician diagnosed R- with Borderline Intellectual Functioning, Major Depressive Disorder, and Panic Disorder. The clinician noted R-'s depression and anxiety fell in the severe range. The clinician indicated R- is likely to continue with her mental health decline, and that limited functioning in intellectual and neurocognitive abilities will likely present a hinderance to her capacity to recuperate from the loss of the support the Applicant provides.

A review of the Director's analysis reveals the Director glossed over much of this information, and only acknowledged that a single assessment (the December 2021 version) was submitted for the record. The extent of the Director's analysis was expressed in a single sentence in which they stated, "the assessment does not indicate how your spouse developing depression, anxiety, and a panic disorder comes to an extreme form of hardship."[3] The Director also noted the assessment was completed after they issued the Applicant a request for evidence and one week before they received the Applicant's response, stating this "appears to be a last minute attempt to supply some evidence in support of your application." While it is not categorically inappropriate for the Director to observe how the timing of psychological evaluations may be sporadic and coincidental if they closely align with immigration filings, they should raise that timing while engaging with the content of the evidence an applicant provides.

What is required is that the previous trier of fact consider the issues raised and announce its decision in terms sufficient to enable an appellate body to perceive that it has heard and thought and not merely reacted. *Farah v. U.S. Att'y Gen.*, 12 F.4th 1312, 1329 (11th Cir. 2021). If evidence is highly relevant, the adjudicating body must at least acknowledge that evidence, either implicitly or explicitly, in its decision. The decision must create the conviction that it "considered and reasoned through" the highly relevant evidence. *Farah*, 12 F.4th at 1329 (citing *Ali v. U.S. Att'y Gen.*, 931 F.3d 1327, 1331 (11th Cir. 2019)). We are not convinced that the Director met this standard here.

On the issue of considering all the hardship claims in the aggregate, the appeal brief notes R-'s emotional hardships, financial considerations, and ties to the United States. We discussed the emotional hardships to R- above. The financial considerations are that R- has a limited education that terminated when she was 15 years old, she has never been employed in the workforce and instead she

[3] We observe such a legal conclusion relating to what would constitute an extreme hardship within a psychological assessment is generally treated as falling outside the clinician's area of expertise and it is unclear why the Director appears to expect such a conclusion in the psychological materials.

managed their household and raised their three children, and she has limited employment options at her advanced age. The couple owns their home and considering R-'s mental and cognitive situation, she would be unable to afford professional mental health treatment, everyday expenses, and cost of home ownership to include the taxes and she would likely lose her home. This would force her to live with one of her children in a degraded mental and cognitive state.

Considering all of the evidence relating to the financial, emotional, and psychological situation of the Applicant's spouse in its totality, including evidence we reviewed on appeal, we conclude that the record demonstrates the financial, medical, and emotional hardships R- would experience, when aggregated, would rise to the level of extreme hardship.

And we agree with the Applicant that the Director did not evaluate all of his claimed positive factors when they performed their discretionary analysis. The positive factors include the Applicant's familial ties in the United States. Those ties include his spouse and two children who are LPRs, and one child who is a U.S. citizen. He has also demonstrated ties to his community and shown good moral character, consistently meets his tax and other financial responsibilities, has shown consistent employment, has no criminal record in the United States after nearly three decades, expresses remorse for violating our immigration laws so many years ago, and he has demonstrated his qualifying relative would experience extreme hardship if he were denied admission as an LPR. The adverse factors stem from violating immigration laws as they related to the Applicant's entries in 1993.[4] Here, we conclude the Applicant merits a favorable exercise of discretion, as the positive discretionary factors outweigh the negative.

III. CONCLUSION

The Applicant has established by a preponderance of the evidence that denial of the waiver application would result in extreme hardship to a qualifying relative upon relocation and that he merits a favorable exercise of discretion. Section 212(i) of the Act; *Chawathe*, 25 I&N Dec. at 375; *see also* 9 *USCIS Policy Manual*, *supra*, at B.4(B). We note when the Applicant filed this appeal, he simultaneously filed a motion relating to his Form I-485. The Director should consider the effect of this waiver application's approval on the status of the Form I-485.

ORDER: The appeal is sustained.

[4] The Director also included denials of the Applicant's previous immigration filings as adverse factors, but they did not explain why each denial should be considered adverse. For instance, if the Applicant offered false information and an application was denied based on that act, we would consider that to be an additional adverse factor. Alternatively, a denial of an application because the Applicant filed an adjustment application before a visa number was available would not prove to be an adverse factor.