U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23628773

Date: NOV. 16, 2022

Appeal of Manchester 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 fraud. 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 Manchester 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 their U.S. citizen spouse, their only qualifying relative.

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 dismiss 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).

II. ANALYSIS

The Applicant entered the United States using a nonimmigrant visitor's visa in 2016 and filed to extend that status multiple times. Within those extension requests, the Applicant omitted relevant information such as his violations of his nonimmigrant status, and his unlawful employment. USCIS approved each of the extension requests and as a result, the Director determined the Applicant is inadmissible under section 212(a)(6)(C)(i) for the fraudulent acts. During an interview with a USCIS officer, the Applicant also admitted that he utilized a fraudulent social security card to obtain employment. After considering the Applicant's hardship claims, the Director denied the Applicant's waiver application because he did not demonstrate that the refusal of his LPR status would result in extreme hardship to his spouse (J-) who is his only qualifying relative.[1] Because the Applicant did not make an extreme hardship showing, they did not provide a discretionary analysis of the positive and negative factors.

Upon consideration of the entire record, including the evidence submitted and arguments made on appeal, we adopt and affirm the Director's ultimate determination with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623, 624 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994)); *see also Chen v. INS*, 87 F.3d 5, 7–8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

The record contains J-'s affidavit in which she notes she will not return to the Applicant's home country if he is denied admission as an LPR. The Applicant therefore must demonstrate that the refusal of his admission as an LPR would result in extreme hardship to J- if she remains in the United States.

As noted, we adopt and affirm the Director's decision on the waiver application, but we do not subscribe to their analysis regarding the psychological evaluations the Applicant submitted on behalf of J-. Although the Director noted the clinician's diagnosis that J- suffers from Major Depressive Disorder, they gave the evaluations diminished evidentiary weight. The Director ascribed the evaluations with less weight for the following reasons: the evaluations took place over the telephone during a three-hour period, rather than in person; J- has not taken steps to obtain treatment to aid in her mental health; the evaluations did not contain "recommendations for cognitive-behavior therapy, medication, or alcohol-abuse programming"; there is no indication J- has obtained meaningful professional help for her depression despite being aware of her condition for several years; the

[1] We use initials to protect individuals' identities.

evaluations "appear to have been undertaken solely to support the application for a waiver upon request of your attorney, rather than to provide [J-] with needed mental health treatment"; and since the last evaluation no additional supporting documentation was submitted.

As the Applicant explains on appeal, the Director didn't take into account the interviews were conducted during the COVID pandemic when telehealth was the preferred method of evaluation by medical professionals. Additionally, the evaluations did contain recommended treatments that J- should seek out to improve her situation. While it is true that J- has not sought professional treatment in the form of therapy or medications to mitigate her mental state, the July 2021 evaluation explained J-'s resistance to seeking help with mental health due to the culture in her family relating to such treatment. Even though she has not begun therapy as of the appeal filing, J- offers a new affidavit now in which she expresses she is open to seeking help, but she has not been able to find a therapy support group that appeals to her.

Overall, the evaluations offer insight into J-'s notable history of depression and alcohol abuse. They describe her previous bouts with depressive states and the factors that triggered them. We ultimately conclude that although the evaluations offer some of the effects of J-'s depression, they do not establish the severity of her emotional hardship or the effects on her daily life. And as the Director noted, mental health services and pharmaceuticals to mitigate J-'s situation are available both now and in the event that the Applicant's waiver application is denied, and he is removed from the United States. It is therefore unclear whether J-'s untreated mental health situation would be similar had she followed the clinician's recommendations. Additionally, we note that the clinician included narratives in the evaluations that extend beyond her expertise when she offered legal conclusions regarding extreme hardship in the event the Applicant's waiver application is denied.

The Applicant also contends the Director erred in at least two instances in which they included adverse information in the denial without giving him an opportunity to rebut the adverse materials. *See* 8 C.F.R. § 103.2(b)(16)(i). In these instances, we do not agree that the Director was required to inform the Applicant of the referenced information before issuing a denial decision. The first contention was under the Applicant's medical hardship claims in which the Director noted the availability of fertility services in the Applicant's home country.[2] We do not consider this to be adverse information to which the Applicant was not aware; it is simply information the Director provided to address one of the Applicant's claims. Furthermore, as J- states in her affidavit, she will not accompany the Applicant to reside in his home country causing this information to be even less relevant.

The Applicant also alleges the Director was required to put him on notice regarding adverse information about their mortgage, the value of their residence, and whose names were on the mortgage. We note the Director did not specify from what document they obtained the figures of J-'s property assessment of $190,700 for tax purposes or the market value of $300,000. The Director also indicated the county property records reflect J-'s father is a co-owner of her home, but we did not find those documents as part of the record.

Despite the fact those materials are missing from the record, it does contain a printout from NewRez, a mortgage-related organization. This document reflects J- is the borrower for their residence, a person

[2] J- and the Applicant were engaging in fertility services here in the United States.

sharing the same name as her father is listed as the co-borrower, the principal balance owed on the loan, and the current property value. The Director did not utilize the home value figures ($190,700 or $300,000) in their analysis, but they did note that in the event the Applicant's admission was refused, J- could either sell the property or could receive financial assistance from her father, as he was listed as the co-owner.

On appeal, the Applicant indicates the Director's introduction of this information was adverse and they should have placed him on notice before including it in the denial decision. While we are unsure where the Director obtained the information they included in the decision, they did not analyze any of the information that was not included within the Applicant's evidence submitted in support of the waiver application. The Director only relied on the information that the property was jointly owned, which was included on the NewRez printout. Additionally, the Applicant and J- included this same information relating to J-'s father in their personal statements. We therefore see no error on the Director's part.

On the final appellate issue, the Applicant takes issue when the Director noted that J- could obtain financial assistance from her father to aid in paying the mortgage debt. The Applicant's appeal brief notes that J- is an adult-aged person and it "is unreasonable to expect her to avoid financial hardship simply by asking her father for money," as this is a luxury not afforded to most adults. We note the presence or absence of financial and emotional support a qualifying relative might have available is a common factor we consider when evaluating extreme hardship claims. *Cervantes-Gonzalez*, 22 I&N Dec. at 566; *Matter of Andazola-Rivas*, 23 I&N Dec. 319, 323 (BIA 2002).

The Applicant's claims do not fall on deaf ears. But our role in this process is not to waive inadmissibility grounds due to the types of difficulties one might encounter under the usual or expected circumstance of being physically removed from the life and the family they have built. Instead, our role is to determine whether the currently experienced and prospective adversities exceed those anticipated hardships, and in this case the Applicant has not offered claims and evidence that satisfies that elevated test. Even considering all the evidence in its totality, the record remains insufficient to show that the aggregated financial, psychological, and emotional hardships of separation would be unusual or atypical to the extent that they rise to the level of extreme hardship.

ORDER: The appeal is dismissed.