U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22723398

Date: OCT. 12, 2022

Appeal of Des Moines, Iowa Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Nigeria, 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 or misrepresentation.

The Director of the Des Moines, Iowa Field Office denied the waiver application, concluding that the Applicant has not demonstrated that his qualifying relative would suffer extreme hardship if the request for the waiver is denied.

On appeal, the Applicant submits a brief and additional evidence and contends that the Director failed to properly weigh the evidence submitted and made unwarranted conclusions without properly considering all evidence. The Applicant also contends that the Director erred in applying the legal standard for cancellation of removal under section 240A(b) of the Act, 8 U.S.C. § 1229b, which requires exceptional and extremely unusual hardship to the qualifying relative.

The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). In these proceedings, it is the applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will remand the matter to the Director for the entry of a new decision.

I. LAW

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), renders inadmissible 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, admission into the United States, or other benefit provided under the Act. Section 212(i) of the Act provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or LPR spouse or parent of the noncitizen.

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).

II. ANALYSIS

The Applicant was found inadmissible for fraud or willful misrepresentation of a material fact under section 212(a)(6)(C)(i) of the Act. The record reflects that the Applicant provided false information and fraudulent documents to the U.S. Department of State on numerous occasions when applying for nonimmigrant visas. The Applicant does not contest this determination on appeal. Thus, the remaining issues on appeal are whether the Applicant has demonstrated extreme hardship to his U.S. citizen spouse, and if so, whether he merits a waiver as a matter of discretion.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case, the Applicant's U.S. citizen spouse. 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. Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. 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. 9 *USCIS Policy Manual B 4(B)*, https://www.uscis.gov/policymanual. In the present case, the record indicates that the Applicant's spouse intends to remain in the United States. In a statement, dated June 2021, the Applicant's spouse stated, "I would love to go to Nigeria but not to live there." Therefore, the Applicant must establish that if he is denied admission into the United States, his qualifying relative would suffer extreme hardship upon separation.

On appeal, the Applicant contends that the Director applied an erroneous legal standard when adjudicating his waiver application. The Applicant further contends that the Director applied the legal standard for cancellation of removal under section 240A(b) of the Act, which requires exceptional and extremely unusual hardship to the U.S. citizen or LPR spouse, parent, or child of the noncitizen. Upon review of the Director's decision, we determine that the Director correctly applied the legal standard for a waiver of inadmissibility under section 212(i) of the Act to find that the Applicant has not demonstrated extreme hardship to his qualifying relative. Nevertheless, we will remand the matter to the Director for further review because on appeal the Applicant submits new developments and evidence that may establish extreme hardship to his spouse.

The record indicates that the Applicant's spouse stated that the Applicant is the main breadwinner of the family and if the Applicant is forced to leave the United States, then her family would be dependent on the government welfare, and her two children who reside with the Applicant and his spouse will not be able to receive the best education to work towards their future. The Applicant's spouse also

stated that their house needs extensive repairs; they made plans to fix the house, but if the Applicant is sent back to Nigeria, she will not be able to fix the house alone, which will lead to homelessness for the family. The Director found that the record did not reflect that the Applicant's spouse relied on the Applicant's income because both the Applicant and his spouse worked at the same meat packing factory, received similar pay, and were eligible for benefits through their employer. The Director also noted that while the Applicant's spouse may not be able to enjoy the same standard of living, the Board of Immigration Appeals (BIA) has found that an inability to maintain one's present standard of living, inferior economic opportunities, and inferior medical facilities do not constitute extreme hardship.

On appeal, the Applicant asserts that because they both earn relatively low wages, they depend on each other's income to make their ends meet. The record contains earning statements of the Applicant and his spouse, which show that the Applicant and his spouse previously worked for the same meat packing factory earning similar wages depending on the hours worked ($19.30 an hour). On appeal, the Applicant now claims that he is no longer authorized to work in the United States and does not have a job. Based on the Applicant's statement, it appears that the Applicant's spouse is now the sole provider for the family. The Applicant also states that their house needs extensive repairs and the urgency of the repairs is heightened by severe fire damage that occurred in September 2021. To support this claim, the Applicant submits documentation, which show that there was a building fire in their residence in September 2021 and that his spouse received a cash assistance of $824 from the American Red Cross to cover her immediate needs resulting from the fire. The Applicant also submits birth certificate of their child who was born in [redacted]2022. The Applicant states that if the Applicant is removed, his spouse will become homeless together with her children and mother because she will be barely able to provide the basics for the family on her single salary and because she is unable to repair the house by herself, and she will be unable to afford the cost of repairs.

Regarding emotional and medical hardships, the Applicant's spouse stated that she suffers from depression and diabetes, that she takes medications for these conditions, and that the Applicant is always there comforting her and making her relax. The Applicant's spouse also stated that the Applicant helps her plan meals and exercise. The Applicant's spouse asserted that if the Applicant is forced out of her life, then her depression will spike, and she will not live long because she cannot handle all this alone. The Applicant's spouse also stated that her mother suffers from diabetes and high blood pressure, that she and the Applicant have decided that her mother could stay with them because of her mother's failing vision, and that she would not be able to handle all of this without the Applicant's support and financial contributions. Regarding the Applicant's mother-in-law, the Director noted that the Applicant did not submit any supporting evidence of her current medical issues. The Director found that the evidence of record did not indicate that the Applicant's spouse would not be able to manage her depression and diabetes. The Director noted that the Applicant did not submit detailed evidence on how the Applicant provides medical care support to his spouse and how his absence would negatively affect her overall health. The Director also determined that emotional hardship caused by severing family and community ties is a common result of deportation or leaving and noted that although this may be difficult, the Applicant would be reunited with his family in Nigeria where the Applicant and his spouse could have extended family support.

On appeal, the Applicant submits medical records of his mother-in-law, which show that his mother-in-law suffers from anxiety, depression, diabetes, chronic back pain, dyslipidemia, eczema, sleep disorder, lumbar spinal stenosis, visual changes, and other conditions. The Applicant also submits

medical records of his spouse, which show that the Applicant's spouse has a history of anxiety and depression and that she suffers from diabetes, sleep apnea, and major depression. The Applicant asserts that his spouse's depression would be substantially worsened by the Applicant's departure especially when combined with the loss of his financial income, his assistance in parenting their children, his companionship and support, and his assistance in the repairs and maintenance of the family home. The Applicant also states that his spouse's employment position is already precarious because she has already accumulated 9 points for absences due to her mental and physical health conditions, with only 10 points required for termination. To support this claim, the Applicant submits documentation from his spouse's employer. The Applicant asserts that if he is removed from the United States, then the stresses on his spouse would greatly increase, these stressors would make managing her depression and diabetes much more difficult, and this in turn will cause her to be absent from work, leading to her termination.

Considering the Applicant's brief and new evidence submitted on appeal relating to extreme hardship to his U.S. citizen spouse if she remains in the United States, we find it appropriate to remand the matter for the Director to determine in the first instance if the Applicant has established extreme hardship to his spouse. If the Director finds that the Applicant has established extreme hardship to his spouse, then the Director must consider whether he merits a favorable exercise of discretion.

III. CONCLUSION

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