U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22721535

Date: OCT. 13, 2022

Appeal of Hartford, Connecticut Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Peru, 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 Hartford, Connecticut Field Office denied the waiver application, concluding that the Applicant has not established eligibility for the waiver based on the lack of evidence of extreme hardship to his qualifying relative and the lack of positive factors to offset his negative actions.

On appeal, the Applicant submits a brief, seeking reconsideration of the Director's decision based on a plain error and abuse of discretion. 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 dismiss the appeal.

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 issue on appeal is 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 does not contest the Director's determination that he is inadmissible under section 212(a)(6)(C)(i) of the Act for using a passport that was not properly issued to him enter the United States and during his interview to adjust his status to that of an LPR.

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 does not contain a statement to indicate that the qualifying relative intends to remain in the United States or relocate to Peru. The Applicant must, therefore, establish that if he is denied admission, his qualifying relative would experience extreme hardship both upon separation and relocation.

The record reflects that the Applicant, a 43-year-old male, and his spouse, a 48-year-old female, were married in 2014. The Applicant's spouse has three adult children from her prior marriage.

Regarding financial hardship, the Applicant stated that he is the primary breadwinner for the family. The Applicant's spouse stated that she previously worked in the food service industry for 18 years, but quit after she was injured at work, and relies on the Applicant's income and support. To support this claim, the Applicant previously submitted their income tax returns for 2019 and 2010, his earning statements, a letter from his employer, a bank statement, a lease agreement, a utilities bill, several bills for medical services, and a car insurance policy.

On appeal, the Applicant states that he pays for all expenses and without him, his spouse would experience financial hardship. However, the record does not contain sufficient information regarding the family's monthly financial obligations or source(s) of any other income, such as disability benefits, if appliable. While the Applicant mentions that he does not have significant savings for relocation, the record does not contain evidence of how much he has in savings. Without a complete picture of the Applicant's household assets and liabilities, we are unable to determine the level of hardship that the Applicant's spouse would suffer. In addition, it has not been established that the Applicant would be unable to contribute to the family's income from Peru or that the Applicant's spouse would not be able to adjust to her new circumstances. Furthermore, the record does not show that the Applicant is the only source of financial support available to the Applicant's spouse; as noted above, the Applicant has three adult children, and she has a very close relationship with them. The record does not establish

whether her children could financially assist the Applicant and her spouse. The record, as currently constituted, is insufficient to show that this financial hardship would rise to the level of extreme if the Applicant's spouse remained in the United States while the Applicant resided abroad.

Regarding medical hardship, the Applicant's spouse stated that she suffers from cervical disc degeneration, cervicalgia, asthma, mixed hyperlipidemia, diabetes, raised antibody titer, and carpal tunnel syndrome, and that she recently had back surgery and takes several medications to treat her health conditions. The Director acknowledged that the Applicant's spouse has multiple health issues but found that none of them are extremely severe where she would be homebound in the United States and unable to find adequate health care in the Applicant's home country or outside the home country.

On appeal, the Applicant states that he previously provided medical records corroborating his spouse's health conditions. While the evidence indicates that the Applicant's spouse has multiple health issues, it does not establish that she needs assistance in daily activities. The documents previously provided do not indicate the Applicant's role in his spouse's medical treatment. Collectively, the record does not establish that the Applicant's spouse would suffer extreme medical hardship.

Regarding other personal hardships relating to her mother, daughter, and grandchildren, the Applicant's spouse stated that she is the primary caretaker for her 74-year-old mother who lives in her own apartment but has multiple health conditions, and that her mother had a heart attack which requires follow-up treatments. The Applicant's spouse stated that she coordinates the care of her mother, buys groceries, manages her mother's finance, and takes care of her mother. The Applicant's spouse stated that the Applicant is also very involved with her mother's care. The Applicant's spouse also stated that she often takes care of her two grandchildren, 13 years old and 7 years old, so that her daughter can work. The Applicant's spouse stated that the Applicant is kind and loving to her children.

For a waiver of inadmissibility under section 212(i) of the Act, a qualifying relative is a U.S. citizen or LPR spouse or parent. The Applicant's children, grandchildren, or mother-in-law are not qualifying relatives. However, we consider any hardship that the qualifying relative may experience as a result of hardships to other non-qualifying relatives. Here, it appears that the Applicant's mother-in-law requires medical treatment and appropriate monitoring by capable medical personnel due to her health conditions. However, the evidence does not indicate that the Applicant's mother-in-law is reliant on the Applicant and how his absence would impose an extreme hardship to the Applicant's spouse in caring for her mother. The evidence also does not indicate that the separation between the Applicant and his spouse would cause the Applicant's mother-in-law, daughter, or grandchildren hardship that would cause extreme hardship to the Applicant's spouse. Collectively, the evidence of record does not provide that the Applicant's spouse would suffer extreme hardship in the scenario of separation.

Regarding hardships in the scenario of relocation, the Applicant stated that his father and cousin are in Peru, but they are unable to assist the Applicant and his spouse upon relocation. The Applicant also stated that he would lose his income as he would not be able to find comparable employment in Peru, and due to unemployment and lack of significant savings for relocation, he would not be able to support himself and his spouse. The Applicant's spouse stated she has never been to Peru and that she is afraid of relocating to Peru due to lack of safety in Peru, her serious health conditions for which she will not have treatment, and separation from her children and grandchildren. The Applicant asserted that a travel warning for Peru from the U.S. Department of State indicates that his spouse would face

significant danger upon relocation to Peru and this increased danger would support a finding of extreme hardship. The Applicant asserted that his spouse's health conditions would be difficult to manage in a country where healthcare is limited or unavailable and that relocation to Peru will likely result in his spouse's health deteriorating rapidly and that these conditions can turn lethal resulting in irreversible damages to his spouse ranging from diminished life expectancy to a premature death. The Director noted that the U.S. Department of State website suggests various measures that the visitors can take to avoid becoming a victim to a potential crime. The Director also noted that medical care is generally good in the Lima area and is usually adequate in other major cities, but it is less adequate elsewhere in Peru. The Director further noted that pharmacies are widely available although some medications might not be offered, and brand names will differ from products in the United States. The Director found that the Applicant is a scrap yard laborer, an industry that is in need in Peru and that the likelihood of finding work in this field is optimistic.

On appeal, the Applicant states that Peru is a country with extreme poverty, severe income inequity, and scare opportunity. The Applicant repeats that he would lose his income and would not be able to find comparable employment in Peru and that due to unemployment situation and the lack of significant savings for relocation, he would not be able to support himself and his spouse. The Applicant also repeats that the presence of the U.S. Department of State travel warning indicates that the Applicant's spouse would face significantly danger upon relocation. We acknowledge that the Applicant's spouse may experience some hardships due to her close family ties in the United States and her health conditions, which require appropriate monitoring by capable medical personnel. The record reflects that relocation would disrupt the continuity of the Applicant's spouse's medical care and require her to find adequate medical facilities and treatment in Peru. We also acknowledge that the Applicant's spouse is the primary caregiver for her elderly mother who requires medical care and assistance in daily activities. However, it has not been established that the medical treatments the Applicant's spouse needs are not available in Peru. In addition, the record does not show that the Applicant's spouse is the sole source of assistance available to her mother, particularly since she has three adult children. The Applicant's spouse also states that her mother has the services of a nurse and a homemaker who come to her mother's home. It also has not been established that the Applicant would not be able to find employment or make a living in Peru to support the Applicant and his spouse. Moreover, it has not been established that the Applicant and his spouse would be living where crime and terrorism are reported in the travel advisory. It is also noted that leaving behind the security of living in the United States would be considered a common consequence of relocation. Collectively, the evidence submitted is not sufficient to show extreme hardship for relocation.

As noted above, the Applicant must establish that denial of the waiver application would result in extreme hardship to his spouse both upon separation and relocation to Peru where the Applicant was born and raised. While we are sympathetic to the family's circumstances, considering all the evidence in its totality, the record remains insufficient to establish that the aggregated financial, medical, and other personal hardships of separation and relocation would be unusual or atypical to the extent that they rise to the level of extreme hardship. The record does not demonstrate that the Director made a plain error or abused the Director's discretion in denying the Applicant's waiver application. As the Applicant has not established extreme hardship to his spouse in the event of separation and relocation, we cannot conclude that he has met this requirement. The Applicant contends that because this waiver is intended to keep help families unified, the Director's failure to weigh all family factors is a ground for reversal on appeal. We acknowledge that a family unity is a significant factor to consider when

we decide whether to exercise our discretion favorably and consent to the Applicant's admission to the United States. But because the Applicant has not demonstrated extreme hardship to his qualifying relative if he is denied admission to the United States, we need not consider whether he merits a waiver in the exercise of discretion. Therefore, the waiver application will remain denied.

III. CONCLUSION

The Applicant has not established his statutory eligibility for the requested waiver under section 212(i) of the Act. Accordingly, the waiver application will remain denied.

ORDER: The appeal is dismissed.