U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22744782

Date: OCT. 22, 2022

Appeal of Atlanta, Georgia 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 the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). The Director of the Atlanta, Georgia Field Office, denied the application, concluding that the Applicant did not establish extreme hardship to his qualifying relative, if the waiver is denied. On appeal, the Applicant asserts that the Director's decision was erroneous and that he has met his burden of demonstrating that his qualifying relative will suffer extreme hardship and that he merits a waiver as a matter of discretion.[1]

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). Upon our de novo review, we will remand the matter to the Director for further proceedings.

I. LAW

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, 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 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. If the noncitizen demonstrates the existence of the required hardship, then they must also show that U.S. Citizenship and Immigration Services should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

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)

[1] The record indicates that the Applicant filed an adjustment application based on an approved petition filed by his U.S. citizen son. We note that the Applicant also asserts his Form I-485 adjustment application should be reconsidered and approved. The adjustment application, however, is a separate proceeding, over which we have no appellate authority. See 8 C.F.R. § 245.2(a)(5)(ii).

(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

Upon review of the record in its totality, we will remand the matter to the Director for further review and issuance of a new decision.

First, we note that the Director's decision contains inconsistent statements regarding the Applicant's inadmissibility. For example, in addition to being inadmissible pursuant to Section 212(a)(6)(C)(i) of the Act for fraud and willful misrepresentation, the Director stated that the Applicant also is subject to the "3-year or 10-year bar" because he was unlawfully present in the United States in excess of "either 180 days or one year or more, respectively, and subsequently departed the United States." However, in the decision, the Director did not discuss the Applicant's inadmissibility for unlawful presence, but stated that the Applicant's waiver application was denied pursuant to "sections 212(h) and 212(i)" of the Act.[2] On appeal, the Applicant asserts that he is not subject to criminal grounds of inadmissibility under section 212(a)(2) of the Act and a waiver under section 212(h) of the Act is not needed. Upon review, we conclude that the Director did not correctly cite the grounds of inadmissibility or discuss each applicable inadmissibility ground in the decision to provide an adequate opportunity for the Applicant to respond. Cf. Matter of M-P-, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal).

Second, the Director did not satisfactorily address the evidence in the record. On appeal, the Applicant does not contest his inadmissibility under Section 212(a)(6)(C)(i) of the Act for fraud and willful misrepresentation. However, the Applicant contends that the Director did not sufficiently explain why the evidence did not establish extreme hardship and ignored the evidence he presented.[3]

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

[2] An applicant who is inadmissible for criminal grounds under certain subsections of section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2), may seek a waiver pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

[3] The Applicant further contends, citing a USCIS policy alert regarding "Request for Evidence [(RFE)] and Notices of Intent to Deny [(NOID)]," that the Director should have requested additional evidence if the Director "did not believe that [the Applicant] had submitted sufficient evidence of hardship." However, the Director is not required to issue these before denying an application. See 8 C.F.R. § 103.2(b)(8)(iii) (stating that if the evidence does not establish eligibility, USCIS may deny an application, may request more information, or may issue a notice of intent to deny).

would remain in the United States, if the applicant is denied admission. 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/policymanual. Here, the Applicant contends that the Director analyzed the hardship assuming that the qualifying relative would remain in the United States, disregarding the statements from the Applicant's spouse and their three sons that they would relocate with the Applicant. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship upon relocation.

However, the record does not establish that the Director properly considered all relevant evidence related to extreme hardship to the Applicant's spouse upon relocation. In support of the waiver application, the Applicant submitted a statement from his spouse stating that even though the "possibility of having to move [her] entire family to Mexico terrifies [her]," she knows it is "the right decision" and that her children agree that it is the "best choice" for them. Although the Director acknowledges the spouse's concerns about relocating to Mexico, the decision does not contain any analysis of the hardship the spouse would experience from relocation. Furthermore, the Director should also consider hardship to the qualifying relative resulting from hardship to non-qualifying relatives, including their children and the qualifying relative's parents. Again, when denying an application, the Director must fully explain the reasons in order to allow the Applicant a fair opportunity to contest the decision and provide the AAO an opportunity for meaningful appellate review. Cf. Matter of M-P-, 20 I&N Dec. 786.

Accordingly, we will withdraw the Director's decision and remand the matter to the Director to properly consider and discuss all relevant inadmissibility grounds and the evidence including the evidence submitted on appeal for extreme hardship on relocation. Upon remand, the Director may request any additional evidence considered pertinent to the new determination and any other issue to determine in the first instance if the Applicant has established extreme hardship to his spouse and merits a favorable exercise of discretion.

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