U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22341043

Date: SEP. 20, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Brazil, has applied to adjust status to that of a lawful permanent resident 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 willful misrepresentation. The Director of the San Francisco, California Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant did not establish that his qualifying relative, his U.S. citizen spouse, would experience extreme hardship if the Applicant were denied the waiver. We dismissed a subsequent appeal. The matter is now before us on a motion to reopen and reconsider. On motion, the Applicant submits additional evidence and maintains that his spouse would experience extreme hardship if the waiver were denied. Upon review, we will grant the motion to reopen and remand the matter to the Director for the entry of a new decision.[1]

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. This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. 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) (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

[1] As we are granting the motion to reopen and remanding the waiver application to the Director, we will not address the Applicant's motion to reconsider.

level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. Petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant acknowledges that he is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willfully misrepresenting a material fact, a determination supported by the record.[2] The issue on motion is whether the Applicant has demonstrated that his qualifying relative, his spouse, would experience extreme hardship upon denial of the waiver.

In our prior decision, incorporated by here reference, we determined that the Applicant did not establish that his spouse would experience extreme hardship in the event of relocation because he did not indicate whether she would remain in the United States and separate, or if she would relocate to Brazil. The Applicant stated that he would struggle to find employment and to pay for his spouse's therapy but provided no corresponding evidence concerning Brazil's cost of living, nor did he demonstrate that he would be unable to pay for his spouse's therapy. He did not submit any evidence regarding the healthcare system in Brazil or why it would be inadequate to meet his spouse's needs. While the Applicant submitted a human rights report addressing certain topics such as unlawful killings by police, prison conditions, widespread domestic violence against women, sexual harassment on public transportation and the targeting of certain groups, including racial and sexual minorities, the report did not specifically mention U.S. citizens as the targets of violence. Moreover, although the report addressed various gender inequities, such as the underrepresentation of women in elected positions in Brazil, and salary disparities, the Applicant did not discuss what type of employment his spouse would seek upon relocation. The report provided only broad statistical data and the Applicant did not indicate how his spouse would be directly affected by these inequities. Based on the foregoing, we determined that the Applicant did not establish by a preponderance of the evidence that his spouse would endure extreme hardship.

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. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (providing, as guidance, the scenarios to consider in making extreme hardship determinations). On motion, the Applicant addresses extreme hardship in the context of both relocation and separation. He submits updated statements from himself and his spouse; a new psychological evaluation of his spouse showing a diagnosis of post-traumatic stress disorder, major depression, anxiety, and panic attacks;

[2] The Applicant admits that he provided false information about the validity of the marital relationship between his mother and her U.S. citizen spouse who filed a Form I-130, Petition for Alien Relative for the Applicant, prior to the Applicant's spouse filing the current Form I-130 on his behalf.

medical results for the Applicant's spouse; a letter from his spouses' sister (a psychiatrist); financial records; and country condition information about Brazil. The new evidence is material to the Applicant's claims of financial and emotional hardship. The Applicant's spouse states that her emotional state has deteriorated causing her to: consume alcohol to numb her pain; over-medicate with Tylenol; pull out her hair in frustration; contemplate suicide; and make at least one suicide attempt. Because this evidence is material and was unavailable to the Director at the time of the denial of the waiver application, we find it appropriate to remand the matter for the Director to determine if the Applicant has established that his qualifying relative would experience extreme hardship. If the Director finds that the Applicant has established extreme hardship to a qualifying relative, then the Director must consider whether the Applicant merits a favorable exercise of discretion.

ORDER: The motion to reopen is granted, and the matter is remanded for the entry of a new decision consistent with the foregoing analysis.