U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27061907

Date: November 1, 2023

Appeal of Johnston, Rhode Island Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Director of the Johnston, Rhode Island Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), concluding that she had not established extreme hardship to her U.S. citizen spouse as required to demonstrate eligibility for a discretionary waiver under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). On appeal, the Applicant asserts her eligibility for the waiver.

The Applicant bears the 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). We review the questions in this matter de novo. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The matter is now before us on appeal. 8 C.F.R. § 103.3. Upon de novo review, we will dismiss the appeal.

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 discretionary waiver of this inadmissibility 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. If the noncitizen 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).

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 outside the United States with the applicant. See generally 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda. Demonstrating extreme hardship under both scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. See id. 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. See id. In the present case, the record is unclear whether the Applicant's spouse would remain in the United States or relocate to Colombia if the Applicant's waiver application is denied. The Applicant must, therefore, establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

The record establishes that the Applicant is a citizen of Colombia. The Director determined the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact, and the Applicant, who is seeking adjustment of status, therefore filed this Form I-601 to waive her inadmissibility. The Applicant submitted a waiver application together with statements from her and her husband and financial information. Although the Applicant's spouse's statement said that he has suffered from depression and anxiety since receiving the Notice of Intent to Deny relating to the Form I-130, Petition for Alien Relative, the Applicant has not provided any medical documentation. The Director sent a request for additional evidence relating to the waiver application to which the Applicant did not respond. In denying the Form I-601, the Director determined that the Applicant was not eligible for a waiver under section 212(i) of the Act because she had not established extreme hardship to her U.S. citizen spouse.

On appeal, the Applicant does not contest the inadmissibility finding. The Applicant submits a brief contending that she established eligibility for the waiver based on extreme hardship to her spouse and that the Director failed to consider all the hardship to her qualifying relative. The Applicant's brief does not point out any material errors in the Director's decision, but rather restates the facts in the record before the Director and asks that we reconsider it with humanitarian concerns and family unity in mind. The Applicant disagrees with the Director's weighing of the hardship in the established record. On appeal, the Applicant resubmitted materials supporting the waiver application which were already in the record, including but not limited to, statements from the Applicant and her spouse, proof the Applicant was not married in Colombia, letters in support of the waiver, country conditions for Colombia and Peru (where the spouse is from), family photos and the Applicant's spouse's naturalization certificate.

Upon consideration of the entire record, including the arguments made on appeal, we adopt and affirm the Director's 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, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

We acknowledge the assertions about the Director's weighing of the hardship factors but, nonetheless, the record does not support a determination of extreme hardship. The Applicant's spouse still has not clarified whether he intends to relocate or separate and, as the Director articulated, the Applicant has not met her burden of establishing extreme hardship upon separation. Because extreme hardship upon separation has not been established, we need not address relocation. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

The record, reviewed in its entirety and considering the hardship factors discussed in Matter of Pilch, 21 I&N Dec. at 630-31, does not support a finding that the Applicant's spouse will face extreme hardship if the Applicant lives in Colombia. The record does not establish that the Applicant's spouse faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or child is denied entry into the United States. The hardships the Applicant enumerates do not rise to the level of "extreme" as contemplated by statute and case law.

Considering all of the evidence in its totality, the record is insufficient to show that the Applicant's spouse's claimed financial, mental, psychological, and physical hardships would be unique or atypical, rising to the level of extreme hardship, if he remains in the United States while the Applicant returns to live abroad due to her inadmissibility.

As noted above, we need not reach the question whether relocation would cause extreme hardship to the qualifying relative, and we reserve that issue.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i), the burden of establishing that the application merits approval remains entirely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not sustained that burden. Accordingly, the waiver application remains denied.

ORDER: The appeal is dismissed.