U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7867864

Date: JUNE 9, 2020

Appeal of Las Vegas, Nevada Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), for having accrued unlawful presence in the United States.

The Director of the Las Vegas, Nevada Field Office denied the application, concluding that the Applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act for accruing unlawful presence in the United States of one year or more. The Director then determined that the Applicant did not establish that her lawful permanent resident parents, the only qualifying relatives, would experience extreme hardship if she is removed from the United States.

On appeal, the Applicant asserts that she provided ample evidence that refusal of her admission would cause extreme hardship to her parents.

In these proceedings, an applicant has the burden of proving eligibility for a waiver of inadmissibility. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Applicant has not met this burden.

I. LAW

A foreign national who has been unlawfully present in the United States for 1 year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i)(II) of the Act. 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 foreign national. Section 212(a)(9)(B)(v) 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, 630-1 (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 Director found the Applicant inadmissible for accruing unlawful presence in the United States of more than one year, specifically for entering the United States without inspection in 1995 and not departing until 1999.[1] The Applicant subsequently reentered the United States in 2000 with a nonimmigrant visa. The Applicant does not contest the inadmissibility finding on appeal. The issues on appeal, therefore, are whether the Applicant has established that her parents would suffer extreme hardship upon denial of her admission and, if so, whether she merits a favorable exercise of discretion. We have considered all the evidence in the record and conclude that it does not establish that the claimed hardships rise to the level of extreme hardship when considered both individually and cumulatively. Because there is no showing of extreme hardship, we will not address whether the Applicant merits a waiver as a matter of discretion.

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 an applicant's evidence establishes 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 contains no statement from the Applicant's parents indicating whether they intend to remain in the United States or relocate to Mexico if the waiver application is denied. The Applicant must therefore establish that if she is denied admission, her parents would experience extreme hardship both upon separation and relocation. To show this, the Applicant submitted affidavits from herself and her parents; medical documentation for her father; letters of support from family members; letters from counselors regarding two of her children; and civil documents.

The Applicant contends that her parents are seniors suffering decreased mobility and depend on her for transportation to medical treatments, that she helps them with paperwork, and that without her they will have no one to take care of their daily needs so will struggle to buy food and pay utilities.

In her affidavit, the Applicant's mother describes the poor conditions she left in Mexico and contends that she has a special bond with the Applicant, suffering when they were once separated for many years. The mother asserts that she and the Applicant's father are completely dependent on the Applicant as they live with her family, who pays rent, utilities, and household expenses. The mother

[1] The Applicant accrued unlawful presence from the April 1, 1997, implementation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 until she departed in 1999.

maintains that she earns a $200 monthly pension and the Applicant's father $400 a month so they cannot afford expenses without the Applicant. The mother states that she suffers diabetes, hypertension, high blood pressure, arthritis, and cholesterol, for which she takes pills, and that the Applicant pays to get her medication from Mexico and for her medical checkups. The mother also contends that the Applicant's father suffers stomach problems and headaches due to stress. Medical records show that the father was seen in 2018 for general health maintenance, stomach problems, and headaches, and that he was diagnosed with GERD. The father states that the Applicant takes him places, provides him with clothes, helps with paperwork such as for medical insurance, and assures his proper nutrition. The mother states that they have two other children in the United States who are unable to help much because they have their own families and that three children in Mexico also have their own families to support while earning minimal wage.

The Applicant further contends that she provides for her four U.S. citizen children and a grandchild, who will be emotionally, physically, and economically affected if she were to leave the country. She maintains that her oldest child is a single mother, two of her children receive psychological therapy, and her youngest child is only 11 years old. The Applicant's mother states that she is concerned for the children who face separation from their mother, that their father works so cannot take them to therapy, and that she cannot help with the children. A note from a clinical social worker indicates that the Applicant's daughter was diagnosed with generalized anxiety disorder and major depressive disorder and attends therapy sessions. A note from a licensed therapist indicates that the Applicant's son was diagnosed with generalized anxiety disorder and major depressive disorder for which he had therapy sessions.

The evidence in the record is insufficient to establish that the claimed hardships for the Applicant's parents, considered individually and cumulatively, would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship due to separation from the Applicant. We recognize the parent's contention that they depend on the Applicant, however the affidavits from the Applicant and her parents offer little detail of the support the Applicant provides. The affidavits give little description of the parent's health conditions and financial situation and do not demonstrate the hardship they would experience in the Applicant's absence. The Applicant did not submit medical documentation supporting any of the health conditions claimed by her mother and the limited medical records for her father do not describe the severity of his conditions, provide a prognosis, or explain any treatment he undergoes that requires the Applicant's presence. The mother asserts that they depend on the Applicant financially, but the Applicant did not submit financial documentation to show her own income and expenses or to demonstrate her parent's financial situation, including any assets and liabilities.

We acknowledge the parent's contention that other family members are unable to provide care. Nevertheless, the Applicant has not demonstrated that her absence would cause extreme hardship for her parents in obtaining medical care or that they would be unable to otherwise obtain assistance. The Applicant has also not shown that her parents would be unable to live with other relatives for care and support or that doing so would cause them extreme hardship.

The Applicant asserts that her children need her and will suffer without her. Although children are not qualifying relatives under Section 212(a)(9)(B)(v) of the Act, we consider a child's hardship a factor in determining whether a qualifying relative experiences extreme hardship. Here the record

does demonstrate that the children's separation from the Applicant would cause extreme hardship to the Applicant's parents.

In conclusion, although the record demonstrates that the Applicant's parents may experience some difficulties due to separation from her, the totality of the evidence is insufficient to show that the hardship would exceed that which is usual or expected if they remain in the United States. With respect to relocation, the mother asserts that she and the Applicant's father could not find work, that the Applicant would earn only a minimal wage, and that they would not be safe due to violent crimes. The Applicant maintains that her minor children would have to relocate to where they have no contacts, language, or cultural skills, and there would be poor medical care for her two children receiving psychological therapy. The Applicant must establish that denial of the waiver application would result in extreme hardship to a qualifying relative upon both separation and relocation. As the Applicant has not established extreme hardship to a qualifying relative in the event of separation, we cannot conclude she has met this requirement. As such, no purpose would be served in determining whether she merits a waiver as a matter of discretion. Thus, the waiver application remains denied.

ORDER: The appeal is dismissed.