U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28999402

Date: DEC. 19, 2023

Appeal of New York, New York Field Office Decision

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

The Applicant was found inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), based on a conviction for a crime involving moral turpitude (CIMT). He seeks a waiver of inadmissibility under section 212(h) of the Act to adjust status to that of a lawful permanent resident in the United States.

The Director of the New York, New York Field Office denied the waiver request noting that the Applicant did not submit any documentation of hardship on his spouse, the sole claimed qualifying relative on the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application). The Director found that the Applicant did not establish that refusal of admission would cause extreme hardship to his U.S. citizen spouse. The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Applicant submits a brief, medical documentation for his spouse, a psychological report for the Applicant and his wife, a statement of the Applicant's son, evidence that the Applicant's spouse meets the medical requirements for Social Security Disability Benefits and, evidence that after receiving denial of the waiver application, the Social Security agency informed the Applicant's spouse that her monthly disability payment will be $1,232.80, which is $14,793.60 on an annualized basis. The Applicant asks for consideration of this evidence of hardship on his spouse and two U.S. citizen sons which was not previously provided and which he claims shows that his three qualifying relatives will suffer extreme hardship, in the aggregate, if the waiver is not granted.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

A noncitizen convicted of (or who admits having committed, or who admits committing acts which constitute the essential elements of) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. Section 212(a)(2)(A)(i) of the Act. Individuals found inadmissible under section 212(a)(2)(A)(i) of the Act may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. Where the activities resulting in inadmissibility occurred more than 15 years before the date of the application, a waiver is available if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the noncitizen has been rehabilitated. Section 212(h)(1)(A) of the Act. A discretionary waiver is also available if denial of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse, parent, son, or daughter of the noncitizen applicant. Section 212(h)(1)(B) of the Act.

A determination of whether denial of the waiver would 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). 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).

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 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 clear that the Applicant's spouse would remain in the United States, where she must care for her 86-year-old mother who is "a heart patient with many medical needs," if the Applicant's waiver application is denied. The Applicant's wife says that [to] separate from [her] husband would be traumatic." Therefore, the Applicant may establish eligibility under section 212(h)(1)(B) of the Act by showing that if he is denied admission, his spouse would experience extreme hardship upon separation. The Applicant's two sons have not indicated whether they would relocate or remain in the United States.

In either case, demonstrating rehabilitation or demonstrating extreme hardship, the Applicant must show that the waiver should be granted as a matter of discretion, with favorable factors outweighing the unfavorable factors. Section 212(h) of the Act.

II. ANALYSIS

The Applicant does not dispute his inadmissibility under section 212(a)(2)(A) of the Act for having been convicted of a crime involving moral turpitude. On [redacted], 1995, the Applicant was found guilty and convicted for the offense of attempted Criminal Possession of Stolen Property in the 3rd degree. In [redacted] 2003, the Applicant was placed into removal proceedings and the Immigration Judge ordered his removal in [redacted] 2004. In [redacted] 2015, Immigration and Custom Enforcement (ICE) exercised favorable prosecutorial discretion by joining in a joint motion to reopen and terminate the proceedings before the Board of Immigration Appeals (BIA). The BIA granted the motion to reopen and terminate, which allowed the Applicant to pursue adjustment of status and to file the waiver application currently under review.

The record reflects that more than 15 years had passed since the date of the Applicant's criminal activities. The record does not show whether the Director considered if the Applicant meets the waiver requirements under Section 212(h)(1)(A) of the Act that contemplate, in part, rehabilitation.[1] The record shows that the Applicant has had a clean record since his 1995 conviction, that ICE exercised favorable prosecutorial discretion in joining in a joint motion to reopen and terminate proceedings before the BIA, and the Applicant submits statements from his spouse and his son regarding his good character. Therefore, we remand this matter for the Director to determine whether the evidence supports the Applicant's contention that he met the statutory requirements for a rehabilitation waiver, including reviewing new evidence submitted on appeal relating to the Applicant's good character.

Furthermore, if the Director finds that the Applicant does not meet the statutory requirements for a rehabilitation waiver, the Director should evaluate the record together with the evidence furnished on appeal to determine whether that the Applicant established eligibility for a waiver based on extreme hardship to his three qualifying relatives. Section 212(h)(1)(B) of the Act. We note that, while the Director referenced hardship to the Applicant's U.S. citizen spouse, the record indicates that the Applicant also has two U.S. citizen sons who are qualifying relatives under Section 212(h)(1)(B) of the Act. The Applicant's wife provided evidence supporting that she suffered a shoulder injury that prevents her from working, that she requires her husband's assistance for daily assistance, and that she qualifies for Social Security Disability benefits. The spouse's statement asserts that she is responsible for the care of her 86-year-old mother who has extensive medical problems. Hardship to the Applicant's mother-in-law can be considered insofar as it results in hardship to a qualifying relative. Matter of Gonzalez Recinas, 23 I&N Dec. 467, 471 (BIA 2002). If the Director finds that one qualifying relative will not experience extreme hardship individually, they should consider whether hardship to all qualifying relatives in the aggregate constitutes extreme hardship.

Upon de novo review, we note that the Director has not been afforded the opportunity to consider: (1) whether the Applicant is eligible for a waiver based on rehabilitation; and (2) evidence presented on appeal regarding hardship to three qualifying relatives, the Applicant's spouse and his two sons. Based on the foregoing, we will remand the matter to the Director to consider if a waiver is warranted based

[1] In November 2018, the Director sent a Request for Evidence (RFE) notifying the Applicant that he appears to be inadmissible due to his conviction of a crime involving moral turpitude. The RFE instructed the Applicant to provide an affidavit and supporting documentation addressing whether a qualifying relative would suffer extreme hardship if the waiver were denied This RFE did not address the Applicant's possible eligibility for a waiver based on rehabilitation under Section 212(h)(1)(A) of the Act.

on rehabilitation, or, alternatively, if the aggregate hardship of the three qualifying relatives reaches the level of extreme hardship.

Should the Director find that the Applicant has established rehabilitation or extreme hardship to qualifying relatives in the aggregate, then the Director shall evaluate whether the Applicant warrants a favorable exercise of discretion, taking into consideration hardship, rehabilitation, and other discretionary factors. See 9 USCIS Policy Manual 5.A, https://www.uscis.gov/policymanual (providing a non-exhaustive list of factors that may be relevant to the discretionary analysis).

ORDER: The decision of the Director of the New York, New York Field Office is withdrawn. The matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision.