U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Y-N-F-A-

DATE: NOV. 16, 2015

APPEAL OF NEWARK FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY

The Applicant, a native and citizen of Ghana, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Newark Field Office, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring a nonimmigrant visa and subsequent admission to the United States through fraud or misrepresentation. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

In a decision dated March 4, 2015, the Director found that the Applicant had not established her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The waiver application was denied accordingly.

On appeal, the Applicant contends that the decision did not consider all the evidence as a whole and downplayed the severity of her spouse's medical condition. With the appeal the Applicant submits a brief, a statement from her spouse's physician, medical records for her spouse, and financial documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien 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 this Act is inadmissible.

Section 212(i) of the Act provides that:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that when applying for a B-2 nonimmigrant visa to the United States the Applicant indicated on Form DS-156, signed on August 21, 2008, that she was married when in fact she was single at that time. She subsequently procured entry to the United States with said visa. Based on this information the Director determined the Applicant inadmissible for fraud or misrepresentation. The Applicant does not contest this finding of inadmissibility on appeal.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The Applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang,* 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec.

880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

On appeal the Applicant asserts that her spouse has serious, worsening health conditions that require her assistance and that his medication and letters from his physician confirm his condition. She cites a second letter from her spouse's physician about the need to have her with him for insulin injections and overall upkeep. In his affidavit the Applicant's spouse contends that the Applicant is his soulmate so he would experience emotional hardship if she leaves as he is depressed and cannot imagine life without her. The spouse asserts that with his failing health it has become difficult to care for his children with whom he shares custody, so he needs a life partner for love and support. The spouse claims that he has poor eyesight so can only drive a little at night or in rain or snow and therefore needs the Applicant if there is an emergency with his health or with his children at night or in bad weather. He further contends that he sometimes has numbness in his hands and needs help with chores such as brushing his teeth or dressing the children.

The Applicant further maintains that her income is more than that of her spouse so her contribution to the family is vital, particularly as her spouse's health is deteriorating, and that compared to expenses their monthly income is inadequate. The Applicant's spouse states that he is financially responsible for his five children and that the Applicant's financial support is critical to his financial

wellbeing. He states that he had two jobs but quit one due to back problems, and maintains that his finances are strained as he spends more on his children than ordered by the court in divorce proceedings. He further asserts that he has family in Ghana who look to him for financial support, so he feels overwhelmed.

An updated letter from the spouse's physician, submitted with the appeal, indicates that the Applicant's spouse has been diagnosed with diabetes for which he needs insulin injections twice daily, and states that he has diminished vision for which he has had two surgical procedures but the damage cannot be reversed. The physician maintains that because of impaired vision the spouse risks an overdose of insulin since he cannot measure amounts of insulin and therefore needs the Applicant for proper administration. The physician states that the Applicant's spouse has also been diagnosed with hypercholesterolemia, hypertension, diabetic nephropathy, and hypercalcemia and asserts that uncontrolled high blood pressure and blood sugar can cause early death due to kidney failure. The physician cites lab results and asserts that the spouse has damage to his pancreas and kidney that cannot be reversed, and that he is at risk of heart problems and stroke. The physician further states that calcium in the spouse's teeth is being dissolved so he lost a frontal lower tooth and stands greater risk of a bone fracture. The record also contains lab results and prescription medication documentation for the spouse.

In addition, documentation submitted to the record establishes the Applicant's financial contributions to the household, the Applicant's spouse's resignation from one of his jobs due to medical issues, and the relevance of the Applicant's income in meeting all of the household's financial obligation. The record also includes evidence of the spouse's court-imposed child support obligations to his children, and child support payments made by the Applicant's spouse as required by court agreement.

Having reviewed the preceding evidence, we find that the spouse's circumstances presented in this application, considered in the aggregate, would rise to the level of extreme hardship if he were separated from the Applicant.

We also find the record to establish that the Applicant's spouse would experience extreme hardship if he were to relocate to Ghana to reside with the Applicant. The Applicant and her spouse maintain that health care in Ghana is poor. According to the spouse's physician the eye surgery he had in the United States is not available in Ghana, nor is the prescription medication he gets here, or it will be unaffordable. According to the U.S. Department of State, medical facilities in Ghana are limited, travelers should carry adequate supplies of any needed prescription medicines, and a supply of preferred over-the-counter medications. *U.S. Department of State, Bureau of Consular Affairs, – Ghana*, dated September 15, 2015.

The Applicant further states that her spouse has five children to help support, but cannot take care of them if he is in a third world country like Ghana. The spouse states that in Ghana he would struggle to send money to support his children, but that he does not want to stop child support payments or fail to honor the court order.

The record establishes that to relocate to Ghana the Applicant's U.S. citizen spouse would likely have to leave his five children, born in and three of whom he shares joint legal custody with his ex-wife, and he would be concerned about his health as well as financial well-being. The record establishes that long-term separation from his children, his employment, his community, and the medical professionals familiar with his diagnosis and treatment plan, would cause the Applicant's spouse extreme hardship. It has thus been established that the Applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the Applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the Applicant has established that her U.S. citizen spouse would suffer extreme hardship were the Applicant unable to reside in the United States. Accordingly, we find that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). This office must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the Applicant's U.S. citizen spouse would face if the Applicant were to relocate to Ghana, regardless of whether he accompanied the Applicant or stayed in the United States; the Applicant's gainful employment in the United States; letters of support; and her apparent lack of a criminal record. The unfavorable factors in this matter

are the Applicant's fraud or willful misrepresentation to procure a visa and subsequent admission to the United States in 2008, as outlined in detail above, and periods of unlawful presence in the United States.

Although the Applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of Y-N-F-A-*, ID# 14328 (AAO Nov. 16, 2015)