U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-G-M-

DATE: OCT. 29, 2015

APPEAL OF WASHINGTON FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Ethiopia, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Director of the Washington, DC 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 pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the country by fraud or willful misrepresentation of a material fact. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his U.S. citizen spouse. He filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, under section 212(i) of the Act in order to reside in the United States with his spouse and children.

The Director determined that the Applicant did not establish that extreme hardship would be imposed on his spouse if she remained in the United States, or if she relocated with the Applicant to Ethiopia. The Form I-601 was denied accordingly. *See Decision of the Director*, dated December 10, 2014.

On appeal, the Applicant asserts that the Director applied an improper hardship standard in his case and that the evidence demonstrates that his spouse will experience extreme emotional, financial, and physical hardship if he is denied admission into the country. The Applicant also indicates that the evidence in the record demonstrates that a favorable exercise of discretion is merited in his case. In support of these assertions, the record includes, but is not limited to, statements from his spouse, financial and employment-related evidence; psychological evaluations, medical documentation, and country conditions information.

The Applicant also submits a non-precedent AAO decision that was sustained, and he indicates that his circumstances are similar and that his case should be similarly approved. We note that unpublished AAO decisions have not been designated as precedents, and are thus not binding on U.S. Citizenship and Immigration Services (USCIS) officers or the AAO in administration of the Act. 8 C.F.R. § 103.3(c). We noted further that each application filing is a separate proceeding with a separate record. 8 C.F.R. § 103.2. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> (i) In general. 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 chapter is inadmissible.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation, and states that:

> (1) 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 on December 1, 2001, the Applicant gained admission into the United States by presenting a passport that belonged to someone else. Because the Applicant gained admission into the country through misrepresentation of a material fact, he is inadmissible under section 212(a)(6)(C)(i) of the Act. The Applicant does not contest his inadmissibility under section 212(a)(6)(C)(i) of the Act.

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 record establishes that the Applicant's U.S. citizen spouse is the only qualifying relative in this case. The record also contains references to hardship that the Applicant's children would experience if the waiver application were denied. It is noted that children are not qualifying relatives under section 212(i) of the Act, and hardship to the Applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 BIA 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. *See 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.

The Applicant's spouse asserts that she and the Applicant met in 2002 and were together for several years before marrying in 2010. She states that she needs the Applicant emotionally, spiritually, financially, and physically, and that she would "lose part of her soul" without him. She also discusses

the Applicant's Eritrean ethnic background, and states that she fears for the Applicant's physical and psychological safety in Ethiopia. The Applicant's spouse provides an estimated annual family budget, and she states that she would be unable to pay for rent, bills, insurance and other costs on her own. She indicates that the Applicant owns a liquor store and that the income from the business allows their family to meet all of their financial obligations. In addition, she states that she would not be able to afford to visit the Applicant in Ethiopia if he were denied admission. The Applicant's spouse states that she and the Applicant have two children and that their younger child, born , will not eat solid foods, is underweight, does not form words or talk, and is delayed developmentally and socially. She expresses concern that their son has symptoms of Autism, and she states that doctors have recommended early intervention for their son's conditions and have referred him for special education services. The Applicant's spouse indicates that she needs the Applicant's emotional support with regard to their son's conditions. She also states that she does not have a flexible work schedule and that the Applicant takes their son to therapy appointments and also brings their daughter, born to school.

The record also contains a bio-psychosocial assessment, dated September 22, 2013, and a June 2, 2014, mental health assessment prepared by a licensed certified clinical social worker. The therapist expresses concern about the Applicant's spouse's current mental condition and indicates that the Applicant's spouse is predisposed to severe depression. In addition, the therapist notes the Applicant's spouse's statements that she feels hopeless and has contemplated suicide due to the Applicant's immigration situation. The therapist notes further the Applicant's spouse's statements that she is unable to sleep, has headaches and fatigue, has lashed out at their children, and drinks alcohol to cope with depressive feelings. The therapist expressed concern that if the Applicant were denied admission, his spouse would experience depression due to separation, financial stress, and being a single mother of two young children, one of whom has special needs, and referred the Applicant's spouse for psychiatric evaluation.

A psychological evaluation for the Applicant's son, dated September 2, 2014, reflects that the Applicant's son underwent testing for suspected autism and other severe behavioral disorders. Their son's test results reflected low adaptive and socialization skills and indicated the possibility of an autism spectrum disorder based on characteristics including not responding to his name, avoiding eye contact, flapping his hands, resisting physical contact, and food aversion. An Occupational Therapy Evaluation report dated, July 28, 2014, reflects that the Applicant's son is enrolled in a development program for some of his conditions.

A May 17, 2014, letter from the Applicant's spouse's employer reflects that she has been employed for six years as a cashier, earning an average salary of $1400.00 a month. Additional financial evidence includes the Applicant's and his spouse's Individual Income Tax Returns and W2 Forms; bank account statements; and copies of rent, utility, and auto insurance bills. The couple's 2013 Form W2s and income tax returns reflect that the Applicant's spouse earned $20, 570 in 2013, and the Applicant earned $6040. The tax return evidence reflects further that the couple earned $61,033 from a liquor store owned by the Applicant.

Upon review, the cumulative evidence in the record is sufficient to establish that the Applicant's spouse would suffer hardship beyond that normally experienced upon inadmissibility of a family member if she remains in the United States separated from the Applicant. The evidence demonstrates that the Applicant's spouse would experience emotional hardship due to separation and due to responsibilities as a single parent of two young children, one of whom has special needs. The evidence also demonstrates that the Applicant's spouse would experience financial hardship due to loss of income from the Applicant's business, her inability to pay all of the family's bills on her own, and trying to pay for the family to visit the Applicant in Ethiopia. Considered in the aggregate, the Applicant has demonstrated that the hardships that his spouse would experience if she remained in the United States rise to the level of extreme hardship.

The Applicant has also demonstrated that his spouse would experience hardship that would rise above the common results of removal or inadmissibility to the level of extreme hardship if she relocated with the Applicant to Ethiopia. The Applicant's spouse asserts in her December 2012 and June 2014 statements that she would have to leave her job, family, and church if she returned to Ethiopia. In addition, she states that her parents currently live with their family, she is their only relative in the United States, and she is responsible for their financial and basic needs. The Applicant's spouse indicates that their children would no longer receive quality healthcare in Ethiopia. In addition, she states that the crime rate is high in Ethiopia and she fears their family could be subjected to crime if they relocated. She indicates that she fears psychological and possibly physical harm to the family in Ethiopia due to the Applicant's Eritrean ethnic background. She also expresses fear that their daughter could be subjected to female genital mutilation in Ethiopia. In addition, the Applicant's spouse states that there are few special needs programs in Ethiopia and that their son's condition would worsen there. She also expresses concern that their son would be stigmatized and ridiculed in Ethiopia due to his condition.

Country conditions articles contained in the record indicate that students with special needs are marginalized in Ethiopia and that due to inadequate government investment in services, less than 1% of children with special needs have access to primary education. U.S. Department of State country conditions information reflects that crime is common in Ethiopia, health care facilities are generally inadequate, and access to psychiatric services and medications is limited. *See DOS Country Specific Information*, updated on February 3, 2015 at: *http://travel.state.gov.*

Considering the evidence in the aggregate, the Applicant has demonstrated that his spouse would experience hardships in Ethiopia that would rise above the common results of removal or inadmissibility to the level of extreme hardship if she relocated with the Applicant. Although the Applicant's spouse is a native of Ethiopia, she would be separated from her parents, who now reside with her in the United States, and would also have to leave her job and church if she relocated. In addition, documentation on the record corroborates concerns regarding her son's accessibility to special needs services in Ethiopia and concerns regarding safety conditions and the availability of healthcare for the family in Ethiopia. Considering the factors cumulatively, the Applicant has demonstrated that his spouse would experience hardship that would rise above the common results of removal or inadmissibility to the level of extreme hardship if she relocated to Ethiopia.

In addition, the Applicant has established that he merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 section 212(a)(6)(C)(i) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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 s/he is excluded and/or 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).

The unfavorable factors in this matter are the Applicant's use of a passport that was not his to gain admission into the United States in 2001 and accrual of unlawful presence in the country. The favorable factors are the hardship that the Applicant's spouse and family would face if the Applicant is denied admission into the country, letters attesting to the Applicant's good character, the Applicant's business ownership and payment of taxes, and his lack of a criminal record. We find that the positive factors in this case outweigh the negative factors, such that a favorable exercise of discretion is warranted.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. *See* 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 M-G-M-*, ID# 12809 (AAO Oct. 29, 2015)