U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-A-A-

DATE: SEPT. 3, 2015

APPEAL OF LOS ANGELES FIELD OFFICE DECISION

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

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

The Applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or material misrepresentation. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his U.S. citizen brother. The Applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse and U.S. lawful permanent resident mother.

The Director concluded that the Applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated October 3, 2014.

On appeal the Applicant states that his U.S. citizen spouse and his U.S. lawful permanent resident mother will suffer extreme hardship if he does not receive a waiver of inadmissibility. *Form I-290B, Notice of Appeal or Motion*, filed November 4, 2014. The applicant also submits additional evidence on appeal, including a declaration from his spouse, medical records, financial documentation, and country-conditions information.

The record includes, but is not limited to: biographical information for the Applicant and his spouse, declarations from the Applicant's spouse and letters from his family members in the United States, custody information concerning the Applicant's stepson, financial and employment records for the Applicant and his spouse, a psychological assessment of the Applicant and his spouse, medical records for the Applicant and his spouse, photographs, and utility bills. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) states:

> (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.

The record indicates that the Applicant attempted to procure admission to the United States on July 31, 1991, at [redacted] International Airport, using a Pakistani passport and expired temporary I-551, Alien Documentary Identification and Telecommunication (ADIT) stamp issued to another individual. Upon questioning in secondary inspection, the Applicant provided a sworn statement to immigration officers, stating that he purchased the passport and stamp in Pakistan. In the sworn statement he provided another false name to immigration officials. He was placed into exclusion proceedings and ultimately ordered excluded *in absentia*. He filed a motion to reopen those proceedings; however, the motion was denied after his departure in 1991. The Applicant returned to the United States on June 22, 1993, with a valid non-immigrant visa, and the record reflects no subsequent departure. As a result of the Applicant's attempt to procure admission to the United States through fraud or material misrepresentation in 1991, he is inadmissible under section 212(a)(6)(C)(i) of the Act. He does not challenge his inadmissibility on appeal.[1]

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

> (1) The Attorney General [now the Secretary of the Department of Homeland Security (Secretary)] may, in the discretion of the [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 [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 Applicant is eligible to apply for a waiver of inadmissibility pursuant to section 212(i) of the Act. In order to qualify for this waiver, he must first establish that the refusal of his admission to the United States would cause extreme hardship to a qualifying relative. The Applicant's qualifying relatives are his U.S. citizen spouse and his U.S. lawful permanent resident mother. Hardship to the Applicant will not be separately considered, except as it is shown to affect the Applicant's spouse or mother. If extreme hardship to a qualifying relative is established, the Applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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

[1] The Applicant is also inadmissible under section 212(a)(9)(A) as a result of his exclusion order. The Applicant filed a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, which the Director denied on October 6, 2014. The Applicant did not appeal that decision.

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 deportation, 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, 885 (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. *See Salcido-Salcido,* 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.

This matter arises within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d at 1293. *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The Applicant previously filed a Form I-601 based on extreme hardship to his U.S. lawful permanent resident mother, who at the time was his only qualifying relative. We dismissed the Applicant's appeal on February 22, 2013, finding that the Applicant did not meet his burden of showing extreme hardship to his mother. With this Form I-601, the Applicant submits a second declaration from his mother, without new evidence to corroborate claims of her hardship. Moreover, the record now indicates that the Applicant's mother resides in a different location, whereas he had previously stated that they lived together. The record also indicates that the Applicant has six siblings who reside in lawful status in the United States. In their letters the Applicant's siblings refer to hardship the Applicant's spouse would experience without the Applicant; however, they do not address hardship to their mother or explain why they would be unable to care for her in his absence. In addition, the Applicant's mother's assertions that the Applicant financially supports her are not supported by corroborative evidence

We recognize the impact of separation on families and the emotional hardship that the Applicant's mother would experience if he were removed to Pakistan while she remains in the United States. The evidence in the record, however, considered in the aggregate, does not indicate that the hardship should the Applicant's mother be separated from the Applicant is extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383. We do find, however, that due to the Applicant's mother advanced age of 80; her medical conditions, which include diabetes, high blood pressure, and arthritis; her extensive family ties to the United States, including six adult children; her residence in this country of nearly 20 years, since 1996; and the current conditions in Pakistan, that the Applicant's mother would suffer extreme hardship were she to relocate to Pakistan with the Applicant.

The Applicant also states that his U.S. citizen spouse would suffer extreme hardship if she were to be separated from him. The record indicates that the Applicant and his spouse were married for a second time on [redacted] 2013, having been previously married from [redacted] 1999, until [redacted] 2000. The record indicates that the Applicant's spouse shares legal custody of her eight year-old son from a previous relationship with his father, but that primary physical custody of the child is with the Applicant's spouse and visitation is provided to the child's father. The record also indicates that the Applicant's spouse receives child support from the child's father. In an undated declaration, the Applicant's spouse states that she will experience "physical, economic, and emotional" hardship if she is separated from the Applicant. The Applicant's spouse states that the Applicant is her best

friend who supports and assists her in every way, and without him she will lose her emotional and financial support and a kind and loving role model for her son. She states that her psychological hardships have proven to be "particularly severe and have the potential of causing medical illness, hospitalization, or even death." She says the thought of being separated from the Applicant is affecting her "already declining health."

To support those statements, the Applicant submits a psychological evaluation of his spouse, dated September 12, 2013. The evaluation states that the Applicant's spouse suffered physical abuse in a past relationship and her medical doctor previously diagnosed her with generalized anxiety disorder. The Applicant's spouse told the licensed clinical social worker that she and the Applicant remained close friends after their previous divorce and continued to support one another emotionally. She also relayed that the Applicant "plays a strong role in assisting her" with her son, including caring for him while she works. The licensed clinical social worker confirmed a diagnosis of generalized anxiety disorder and stated that the Applicant's spouse was also suffering severe clinical depression, "with a single episode identified." The licensed clinical social worker concluded that the Applicant's spouse's mental illness will worsen as the Applicant's spouse "proceeds to confront INS stressors" and possible separation from her spouse. He also mentioned an adverse impact on the Applicant's spouse's general health and an "unsafe degree" of anxiety.

The record also contains medical records for the Applicant's spouse dated July 24, 2012, showing that she sought medical attention at the hospital for trouble breathing and was referred to a psychologist for an evaluation related to anxiety. A mental status exam dated January 14, 2013, conducted by [redacted] indicates that the Applicant's spouse was referred for an initial visit based on anxiety from her emergency room visit in July 2012. The report states that the Applicant's spouse was diagnosed with generalized anxiety disorder and also suffers from asthma and aspergillosis. The report states that the Applicant's spouse has some meaningful social relationships, was experiencing mild symptoms, and was "[g]enerally functioning pretty well." The notes also indicate that the Applicant's spouse was single and rented a room from a friend. The record indicates that the Applicant's spouse was seen again at [redacted] on February 8, 2013, following a panic attack. The notes from this visit indicate that the Applicant's spouse was living with her mother, sister, brother-in-law and her son. The notes also indicate that the Applicant's spouse had experienced two anxiety attacks and was told "not to work" until she "fixes anxiety" and to "go on disability." The source of these directive statements is not clear and the Applicant does not establish that his spouse complied with either statement. The medical records do not reflect the Applicant's spouse's stated declining medical health.

The record establishes that the Applicant's spouse was diagnosed with generalized anxiety disorder and has experienced panic attacks for which she has sought medical treatment. The record also establishes that the Applicant's spouse was prescribed medication to treat her anxiety and was advised to seek therapy. The record, however, does not establish the effect that the Applicant's spouse's anxiety has had on her general health. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In addition, the record does not establish the impact of the Applicant's relationship with his spouse on her mental or physical health. The record lacks a clear

picture of the Applicant's relationship with his spouse or their contact between their divorce in July 2000 and their remarriage in June 2013. A lease in the record indicates that the Applicant and his spouse began residing together in June 2013. The Applicant's spouse's medical records indicate that she resided with family and friends before they reunited. At the time of the Applicant's spouse's panic attacks for which she sought medical attention, she was not residing with or married to the Applicant. At the time of the psychological evaluation in the record, the Applicant and his spouse had been married for two and a half months.

The Applicant's spouse also states that she will suffer financial hardship if she were to be separated from the Applicant. In particular, she states that she would have no way of supporting her family and herself without the Applicant's income. She states that she has a medical disability and that she only worked in 2013 out of necessity because the Applicant was laid off and could not find work. She states that the Applicant has since found employment and that he is now the main source of income for the family. She states that his income will allow her the opportunity to attend school and that his income keeps the family out of poverty. The Applicant submits corroborative evidence concerning his employment. The record, however, does not establish that the Applicant's spouse has a medical disability that affects her ability to work. Although the record indicates that the Applicant's spouse claimed an income of $14,509 on her Form 1040 U.S. Individual Income Tax Return for 2013, which is below the poverty guidelines for a family of two, the record also shows that the Applicant and his spouse were married in June 2013 and that the Applicant's spouse previously lived independently from the Applicant. Although the Applicant's spouse states that she could not survive financially without the Applicant, the record does not establish the effect of the Applicant's inadmissibility on his spouse's financial situation. We recognize the serious impact of separation on families, and the evidence shows the Applicant's spouse would experience a degree of emotional hardship if she remained in the United States, apart from the Applicant. The evidence in the record, however, considered in the aggregate, does not indicate that the hardship in this case is beyond that which is normally experienced by families faced with a loved one's removal or inadmissibility. *See Matter of O-J-O-*, 21 I&N Dec. at 383.

The Applicant's spouse also states that she would suffer extreme hardship were she to relocate to Pakistan with the Applicant. The Applicant's spouse is a native of the United States and shares legal custody of her son with her son's father. The Applicant's son's father has visitation rights to the child, but the Applicant's spouse maintains primary physical custody of the child. As noted above, considerable, if not predominant, weight must be given to the hardship that will result from the separation of family members. *See Salcido-Salcido,* 138 F.3d at 1293; *see also Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979) (the court explicitly stressed the importance to be given the factor of separation of parent and child). The Applicant's spouse has established family ties to the United States, has a medical assistant diploma valid in the United States, and does not speak any native languages of Pakistan. We also take note of the country conditions in Pakistan. The evidence considered in the aggregate, particularly the disruption to the Applicant's spouse's obligations to her minor child upon relocation and the resultant effect on her emotional well-being, establishes that the Applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the Applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the Applicant's mother.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the Applicant's U.S. citizen spouse, considered in the aggregate, or his U.S. lawful permanent resident mother, also considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The Applicant has not established extreme hardship to a qualifying relative, as required under section 212(i) of the Act. As the Applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

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 not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-A-A-*, ID# 10601 (AAO Sept. 3, 2015)