U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-C-S

DATE: SEPT. 3, 2015

APPEAL OF PHILADELPHIA 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, Philadelphia, Pennsylvania, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 willfully misrepresenting a material fact to procure an immigration benefit. He is the spouse of a U.S. citizen and the child of U.S. citizens, and has two U.S. citizen children. The Applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his family.

In an April 29, 2014, decision, the Field Office Director concluded that the Applicant had not established that the bar to his admission would impose extreme hardship on either of his qualifying relatives, his spouse and his mother. The Director denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant provides updated financial documentation, identification documents for himself and his mother, custody documentation relating to his children, and materials related to a protection order obtained by the Applicant entered against his spouse. No statements were made on appeal regarding the hardships that the Applicant's qualifying relatives would face upon their separation or relocation.

The record contains, but is not limited to: the documents listed above; financial documentation for the Applicant and spouse; identification documents for the Applicant, spouse and mother; custody documentation relating to his children; materials related to a protection order obtained by the Applicant entered against the qualifying spouse; criminal documentation for the Applicant; medical, psychological and academic documentation for the Applicant's son; general medical information regarding medication to treat attention-deficit/hyperactivity disorder (ADHD); and a letter from the Applicant's mother. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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.

The applicant attested in a May 27, 2009, sworn statement that on December 25, 1995, the Applicant used documents belonging to another person in order to procure admission into the United States. The Applicant is inadmissible for misrepresenting a material fact pursuant to section 212(a)(6)(C)(i) of the Act. The Applicant does not contest this finding on appeal.

Section 212(i) of the Act provides, in pertinent part:

> (1) The Attorney General [now Secretary 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 immigrant 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's qualifying relatives for a waiver of inadmissibility are his U.S. citizen mother and spouse. 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. Hardship to the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The Applicant's spouse and parent are the only qualifying relatives in this case. 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 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. *See Salcido-Salcido*, 138 F.3d at 1293 (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 asserts, in the Form I-601, that his mother depends on him for "errands of all kinds." He also indicates that she is on permanent disability. The record contains a letter from his mother confirming that she is disabled and unable to work, but does not indicate whether the Applicant assists in her care. The mother also indicates in that letter that before she became disabled, she was the Applicant's primary caretaker, and after she became disabled and unable to work, she and the Applicant's brother supported the Applicant. The record does not contain any other documentation

or statements regarding the types of hardships that the Applicant's mother may face upon separation from him.

The Applicant also asserts that his whole family will suffer if he has to leave the United States. He indicates that he is the main person in the family who organizes and coordinates all aspects of his family's life. He also states that his spouse struggles with alcohol and that she has been in denial about her issues. However, he does not sufficiently detail the hardships that his spouse would face upon separation, nor does the record indicate, in light of the protection and custody orders, that he and the spouse reside together.

The Applicant does provide slightly more description regarding the hardships to his children given the spouse's struggles with alcohol and the custody issues affecting the children. He also states that his son is suffering from ADHD, and depends on him full-time. The record contains documentation regarding his son's problems. However, the hardship to the Applicant's children is only relevant to the extent that these hardships affect his qualifying relatives. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, as noted above, the Applicant's spouse and mother are the only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to the Applicant's children will not be separately considered, except as it may affect his qualifying relatives.

Although the Applicant provides documentation regarding the financial position of himself and his spouse, he does not specifically assert whether his spouse or his mother would experience any financial hardships as a result of their separation from him. Moreover, the Applicant has not demonstrated that he would be unable to provide financial support from Ghana. Therefore, based on the record before us, we are unable to find that separation from the Applicant would result in extreme hardship for the Applicant's spouse or parent.

The record is silent regarding the hardships that the Applicant's spouse or parent would have to face if they were to relocate to Ghana with the Applicant. The Applicant also provides no evidence addressing the extent of any family ties to Ghana. As such, in this case, the record does not contain sufficient evidence to show that the hardships the spouse or parent would experience upon relocation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by either of the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant has not demonstrated extreme hardship to his U.S. Citizen spouse or mother 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 the applicant 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 W-C-S*, ID# 12218 (AAO Sept. 3, 2015)