U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-T-C

DATE: SEPT. 8, 2015

MOTION OF AAO 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 Acting District Director, Philadelphia, Pennsylvania, denied the application. The Applicant appealed that decision and we dismissed that appeal. The Applicant filed a motion to reopen and reconsider that decision, the motion to reopen was granted, but the underlying decision dismissing the appeal was affirmed. The matter is now before us on a second motion to reopen and reconsider. The motion will be denied.

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), because he procured admission to the United States using a passport and visa issued in the name of another individual. The Applicant seeks a waiver under section 212(i) of the Act in order to reside in the United States with his U.S. citizen spouse and children.

The Acting District Director concluded that the Applicant did not establish that his inadmissibility would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. The Applicant appealed that decision, and his appeal was dismissed. The Applicant then filed a motion to reopen and reconsider that decision, and the motion was granted, but the underlying decision dismissing the Applicant's appeal was affirmed.

On second motion[1] the Applicant states that there are new facts in the case, namely that his spouse no longer has family in Ghana. In support of that statement, the Applicant submits information concerning the death of his spouse's father and a copy of her mother's U.S. lawful permanent resident card. The Applicant's spouse also provides a declaration, explaining the hardship she will experience as a result of the Applicant's inadmissibility.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent

[1] The motion was timely filed in January 2013, but we did not receive it until February 2015.

decisions to establish that the decision was based on an incorrect application of law or policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Here, the Applicant submits new documentary evidence to support a motion to reopen but has not stated that the prior decision was based on incorrect application of law or policy. We will consider the new evidence as part of a motion to reopen.

On motion, the Applicant, through a declaration from his spouse, states new facts concerning his spouse's ties to Ghana and provides further information concerning why she would suffer extreme hardship were she to be separated from him. He also provides additional documentation concerning health care in Ghana.

Concerning the hardship that she would suffer if she were to be separated from the Applicant, his spouse states on motion that their children attend school, and they are used to the Applicant being home to take care of them after school. She states that if she could no longer rely on the Applicant for this care, she would have to find afterschool care for the children. She also states that having to leave work to care for the children if they were sick and could not go to school would cause her stress.

The Applicant's spouse, moreover, states that her financial situation would be much worse were she to have to find alternative care for the children or leave work when they become sick. The Applicant submits no documentation in support of these assertions. The most recent documentation concerning the Applicant's spouse's income is dated July 2010. In addition, the Applicant's spouse does not state whether other family members would be available to help care for their children after school or when the children are sick. The Applicant's spouse does not mention where her mother, now a U.S. lawful permanent resident, resides and whether she would be able to assist in the care of her children. The Applicant's 2009 Form 1040, U.S. Individual Income Tax Return, shows that the Applicant and his spouse claimed her as a dependent on that return. The record also does not address the cost of afterschool care for the Applicant's children or show how it would affect the Applicant's spouse's financial well-being. Although the Applicant's spouse's assertions regarding her financial hardship are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

The Applicant's spouse states that in addition to financial stress she would also face emotional stress, because their children would suffer without the Applicant, particularly because he is their primary caregiver, and they would worry about him in Ghana. The Applicant submits no documentation to show that the emotional stress that his spouse would experience would differ from the stress normally faced by families facing separation due to immigration inadmissibility. *Matter of Pilch*, 21 I&N Dec. at 632-33. We take the Applicant's spouse's statement concerning the stress she

would face into consideration, along with the other evidence of record. The evidence, however, considered in the aggregate, does not establish that the hardship to the Applicant's spouse, should she be separated from him, rises to the level of extreme.

On motion, the Applicant states that his spouse no longer has family ties to Ghana and that her family no longer has a business there. In support of that statement, the Applicant submits documentation, albeit partially illegible, showing that the Applicant's spouse's father is deceased. The Applicant also submits documentation showing that the Applicant's spouse's mother obtained lawful permanent resident status in the United States in 2008. We take that information into consideration along with the other evidence of record.

In addition, in her declaration submitted on motion, the Applicant's spouse states that it would be a hardship for her to see their children suffer in Ghana, due to the dust there. The Applicant's spouse states that both children have asthma and breathing problems, and they take medication. She states that the children could not play outside in Ghana. The Applicant's children, however, are not qualifying relatives under section 212(i) of the Act, and the Applicant must establish that his spouse would suffer extreme hardship as a result of hardship to their children. His spouse states that she would experience emotional distress if the children would be unable to stay in the United States and receive the medical treatments that they need. The Applicant, however, does not submit current medical documents or a note from the treating physician of their children on motion. The most recent documentation in the record is dated 2010 and includes an asthma patient action plan for the Applicant's daughter, recommending two medications, depending on her condition. Another document, dated August 4, 2010, states that the Applicant's son was seen on September 12, 2007, for "Asthma Ext w/o wheezing" [*sic*].

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence, however, is insufficient to establish the Applicant's children's current medical needs or that they suffer from conditions that are not treatable in Ghana. The documentation the Applicant submits on motion does not show that asthma is not treatable in Ghana or that treatment is cost prohibitive. One of the articles the Applicant submits on motion, "Cost of Health Care Delivery in Ghana," does not address asthma treatment or air quality issues in Ghana, but rather concerns the cost of providing service to the country. The other article, "A Review of Epidemiological Studies of Asthma in Ghana," concludes that more research is needed to differentiate between non-allergic and allergic asthma and to examine the role of environmental air pollutants on the disease. The Applicant's spouse states that she also submitted documentation in 2010 concerning medical care in Ghana. The record includes a 62-page report from the Austrian Red Cross, dated March 12, 2009, which provides an overview of the health-care system in Ghana. No specific conclusions concerning whether the Applicant's children would have access to care for their asthma in Ghana can be made from that report. Another report, "Access to Essential Medicines: Ghana," is dated July 2003 and does not address the medicines that were indicated in the Applicant's daughter's 2010 medical record. Evidence that may be useful to show the degree of emotional distress that the Applicant's spouse would experience because of a lack of medical treatment in Ghana for their children includes, but is not limited to documentary evidence of the children's current health conditions, of the medical attention that they require, and showing that such medical

attention would be unavailable, inadequate, or cost prohibitive in Ghana. The Applicant has not met his burden to prove those facts. Section 291 of the Act, 8 U.S.C. § 1361.

The Applicant's spouse also reiterates that she suffers from high cholesterol and high blood pressure, and the special diet she must follow is not available in Ghana. The most recent documentation of the Applicant's spouse's medical condition in the record dates to October 6, 2006, and shows that the Applicant's spouse was advised to go on a low cholesterol diet. For the reasons stated above, such documentation is insufficient to establish that the Applicant's spouse suffers from a condition that is not treatable in Ghana.

The Applicant's spouse also states that the education system is poor in Ghana, and she could not afford to send their children to private school because of the high unemployment rate in Ghana. In addition, she asserts her long absence from Ghana will affect her ability to find work. The Applicant provides no documentation to support these assertions. In addition, as we stated in our prior decisions, the common or typical results of removal and inadmissibility have not been found to constitute extreme hardship. The Board 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. at 632-33; *Matter of Ige*, 20 I&N Dec. at 883; *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). Based on the information provided on motion, considered in the aggregate with the documentation previously provided, the evidence does not illustrate that the hardship suffered in this case, should the Applicant's spouse relocate to Ghana, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

In this case, the record does not establish that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship 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.

The motion does not establish that our previous decision was based on an incorrect application of law or policy and therefore the motion will be denied. In application proceedings, the burden of proving eligibility remains entirely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has not met that burden. Accordingly, the motion will be denied.

ORDER: The motion is denied.

Cite as *Matter of D-T-C*, ID# 12807 (AAO Sept. 8, 2015)