U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-B-M-

DATE: DEC. 17, 2015

APPEAL OF QUEENS FIELD OFFICE DECISION

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

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

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The Applicant is the beneficiary of an approved Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, as a special immigrant religious worker.

The Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, finding that the evidence was insufficient to establish that a qualifying relative would suffer extreme hardship if the application was denied.

On appeal, the Applicant asserts that his conviction is not for a crime involving moral turpitude. In the alternative he asserts that his spouse, daughter, and U.S. citizen son would suffer extreme hardship if his application is denied.

The record includes, but is not limited to: briefs, a statement from the Applicant's spouse, identity and relationship documents, an undated note written on a prescription form, financial records, a psychological assessment of the Applicant, letters addressing his character, and court documents. The entire record was reviewed and considered in rendering a decision on the appeal.

We review each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 212(a)(2)(A) of the Act states, in pertinent parts:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

> [M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....
>
> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

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

> (h) The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> . . . .
>
> (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The record reflects that on [redacted] 2005, the Applicant pled guilty to and was convicted of misprision of a felony, a violation of 18 U.S.C. § 4, in the U.S. District Court, District of New Jersey.[1] The Applicant was charged with having knowledge of the actual commission of a felony,

---

[1] The Applicant's offense under 18 U.S.C. § 4 is defined as follows:

> Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

namely, the illegal transfer to [redacted] of funds obtained through the distribution of child pornography. He processed credit-card payments for child pornography websites and did not report the crime to law enforcement authorities. The Applicant was sentenced to four months' imprisonment and one year supervised release, and he was fined $5,000.

On appeal, the Applicant concedes that he was convicted for misprision of a felony. He asserts, however, that his conviction was not for a crime involving moral turpitude. The Applicant does not provide legal authority to support his assertion. The Board of Immigration Appeals has found that misprision of a felony in violation of 18 U.S.C. § 4 is a crime involving moral turpitude. *Matter of Robles-Urrea.* 24 I&N Dec. 22, 25-27 (BIA 2007). *See also Itani v. Ashcroft*, 298 F.3d 1213 (11th Cir. 2002). We affirm the Director's determination that the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for his conviction of a crime involving moral turpitude.

Section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

Initially the Applicant listed his U.S. citizen son as a qualifying relative on his application. Subsequently, the Applicant asserted that his spouse, a lawful permanent resident, also is a qualifying relative. The Applicant does not provide, and the record does not include, evidence that his spouse is a U.S. lawful permanent resident. We therefore will consider evidence of hardship to his U.S. citizen son, who appears to be his only qualifying relative under the Act.

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).

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 record contains references to hardship the Applicant's spouse and daughter would experience if the waiver application were denied. It is noted the waiver requires a showing of extreme hardship to an applicant's U.S. lawful permanent resident or citizen spouse or child. In the present case, the Applicant has not shown that either his wife or daughter is a U.S. lawful permanent resident or citizen. His U.S. citizen son, therefore, is the only qualifying relative for a waiver under section 212(h) of the Act, and hardship to his other family members will not be separately considered, except as it may affect the Applicant's son.

On appeal, the Applicant asserts that the Director did not acknowledge the evidence of hardship to his son. The Director's decision, while not explicitly addressing hardship to the Applicant's son, acknowledges and evaluates the evidence the Applicant submitted to establish hardship to his family.

The record contains letters from friends who express support for the Applicant's character and also address the hardship the Applicant's year-old son may experience if the Applicant's waiver application were not approved. In one letter a friend of the family states that the Applicant's son would be traumatized if his family was divided and he were separated from the Applicant. Another friend writes that this country is the only home the Applicant's son has ever known. Another friend writes that it would be unimaginably hard for the Applicant's son to relocate to Russia and that the possible dilemma of having to choose whether to separate or relocate would be extremely difficult.

In addition, in a declaration dated June 1, 2007, the Applicant's spouse asserts that her family would be devastated and suffer extreme hardship if they are deported. She states that their daughter has several health problems. The record includes an undated prescription pad note concerning the Applicant's daughter's treatment for a pre-malignant gynecological condition. While we may sympathize with the Applicant's daughter and the family's efforts to assist her, the record does not show that she is a qualifying relative, specifically, either a U.S. lawful permanent resident or citizen. The Applicant, moreover, provides no evidence concerning the impact of his daughter's hardship on his only qualifying relative, his U.S. citizen son.

The Applicant's spouse also expresses concern about the financial impact of the Applicant's removal on their family. The most recent financial documentation in the record consists of federal income tax returns for the years 2011 through 2013. In 2013, the Applicant and his spouse had an adjusted gross income of $22,396. The Applicant earned $12,196.01 and his spouse earned $10,200 in that year. In 2012, the couple had an adjusted gross income of $8,800, which was solely attributable to the Applicant's spouse. In 2011, they had an adjusted gross income of $11,073. The Applicant earned $973 and his spouse earned $10,100 in 2011. The Applicant submits no other evidence of their financial circumstances and does not specify how their financial circumstances would cause his U.S. citizen son hardship in the event his application is not approved.

Although these assertions have been taken into consideration, insofar as they concern hardship to the Applicant's son, 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, through counsel, also notes that a licensed master's social worker (LMSW) attests to the hardship the family would suffer if his waiver were not approved. Counsel refers to the LMSW's assessment, indicating that the family worked with the LMSW and that the report outlines "the litany of problems [the family is] currently experiencing" and would likely experience if the Applicant were removed. The assessment the Applicant submitted, however, explains the Applicant's legal difficulties due to his criminal conviction and was intended to address "his personal and moral character," according to the LMSW. It does not address hardship to the Applicant's U.S. citizen son. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the Applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The Applicant asserts that his U.S. citizen son will suffer extreme hardship if he is separated from the Applicant. As noted previously, the record contains letters from family friends, asserting that the

Applicant's son would be traumatized if separated from the Applicant. The Applicant submits no additional evidence concerning the hardship that his son would suffer as a result of their separation if he is removed. We recognize the impact of separation on families, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship the Applicant's son would experience is beyond that which is normally experienced by families dealing with removal or inadmissibility.

The Applicant also asserts that his son will suffer extreme hardship if his son relocates to Russia with him. The Applicant submits a letter from a family friend that states that the United States is the only home the Applicant's son has known and that relocation would be unimaginably difficult for him. The Applicant indicates that his son is enrolled in school here and is doing well academically. While it is reasonable to expect that the Applicant's son would encounter certain difficulties were he to relocate to Russia, the evidence provided, considered in the aggregate, does not illustrate that the hardship he would experience would be beyond what is normally experienced by families dealing with removal or inadmissibility.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the Applicant's U.S. citizen son, 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(h) 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 S-B-M-*, ID# 14357 (AAO Dec. 17, 2015)