U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-C-

DATE: JAN. 19, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Germany, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Field Office Director, Oakland Park, Florida, denied the application. We dismissed an appeal of the Director's decision. The matter is now before us on a motion to reopen and reconsider. The motion to reopen and reconsider will be granted and the appeal will be sustained.

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.

In a decision dated September 9, 2014, the Director determined that the Applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, the Applicant submitted additional evidence and asserted that her qualifying relative would suffer extreme hardship if he were to relocate abroad or be separated from the Applicant due to his poor health, his reliance on the Applicant for daily care, his inability to speak German, and the unavailability of affordable health care in Germany.

In a decision dated July 2, 2015, we dismissed the appeal, finding that although the Applicant demonstrated extreme hardship to a qualifying relative upon relocation, she did not demonstrate extreme hardship resulting from separation.

A motion to reopen must state 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: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) 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).

On motion, the Applicant cited case law related to extreme hardship and submitted additional evidence supporting her assertion that her qualifying relative would suffer extreme hardship if he

were to relocate abroad. We find that the requirements of a motion to reopen and reconsider have been met.

The record includes, but is not limited to, statements from the Applicant's spouse and daughter, medical records, insurance documents, and financial records. The entire record was reviewed and considered in rendering this decision.

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-
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> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime ... is inadmissible.
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> (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
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> > (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or
> >
> > (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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-
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> > ....
> >
> > (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 2013, the applicant was found guilty of fraud in "27 concurrences of offenses" in the criminal division of the in Germany. The record reflects that she was sentenced to a term of imprisonment of 10 months and that imprisonment was suspended on probation. She was ordered to perform 50 hours of community service. As the Applicant does not contest that her conviction is a crime involving moral turpitude, and the record does not show the determination that this is a crime involving moral turpitude to be in error, we will not disturb the finding of inadmissibility under section 212(a)(2)(A) of the Act.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. In this case, the qualifying relative is the Applicant's spouse. Hardship to the applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury," *Matter of Ngai,* 19 I&N Dec. 245, 246-47 (BIA 1984), but hardship "need not be unique to be extreme." *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment," are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); *see also Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship); *but see Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

As mentioned, on appeal, we determined that the Applicant's qualifying spouse would suffer extreme hardship if he was separated from the Applicant. We will not disturb that finding and will only address the scenario of relocation.

The Applicant previously established that her qualifying spouse has a rare and aggressive cancer, metastatic ganglioneuroblastoma. She stated that her qualifying spouse is receiving experimental treatment that is unavailable in Germany. In addition, the Applicant's spouse asserted that he does

not speak German, so he would have difficulty communicating with health care providers in Germany. On motion, the Applicant submits additional documentation regarding his treatment, his options for health care insurance, and financial records. Medical documentation in the record indicates that it would be difficult for the Applicant's spouse to be treated in Germany because the expertise in treating neuroblastoma in older patients outside the United States is limited. Medical documentation further indicates that the Applicant's spouse suffers from the only case of adult neuroblastoma in the world and that he is currently undergoing a research treatment regimen. One of Applicant's spouse's physician states that his personalized treatment would be difficult to implement in Germany and that any delay would be lethal. Insurance documentation in the record indicates that the Applicant's current insurance provider, Medicare, will not cover Applicant's spouse's treatment outside of the United States. Insurance documentation also indicates that German insurance providers would not cover the Applicant's spouse because his illness is a pre-existing condition. The financial documentation in the record indicates that the Applicant and her spouse would be unable to pay for medical treatment without health insurance.

The record reflects that the Applicant's spouse has a daughter who resides in the United States. He has no ties to Germany and would have language issues there. The record reflects that the Applicant's spouse would experience significant medical hardship if he were to relocate to Germany. The documentation in the record establishes that a change in his current personalized treatment plan would be significantly detrimental to his health. Based on the hardship factors, in combination with the normal results of relocation, we find that the Applicant's spouse would experience extreme hardship if he relocates abroad.

We now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 299 (BIA 1996). We must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (citations omitted). In evaluating whether to favorably exercise discretion,

> the factors adverse to the alien include the nature and underlying circumstances of the exclusion 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, recency 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 he is excluded and 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).

Id. at 301 (citations omitted). We must also consider "[t]he underlying significance of the adverse and favorable factors." *Id.* at 302. For example, we assess the "quality" of relationships to family, and "the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed]." *Id.* (citation omitted).

The favorable factors include the Applicant's U.S. citizen spouse and extreme hardship to her spouse, her U.S. citizen stepdaughter, and her lack of a criminal record other than the aforementioned crime. We also note that the Applicant completed her 50 hours of court-ordered community service, and the very unique and severe nature of her spouse's medical issue. The unfavorable factors include the Applicant's unauthorized period of stay and criminal record.

We find that the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has met that burden. Accordingly, we sustain the appeal.

ORDER: The motion to reopen and reconsider is granted and the appeal is sustained.

Cite as *Matter of C-C-*, ID# 15394 (AAO Jan. 19, 2016)