U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-A-Z-

DATE: JULY 1, 2016

APPEAL OF SANTA ANA, CALIFORNIA FIELD OFFICE DECISION

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

The Applicant, a native of Iran and citizen of Canada, seeks a waiver of the ground of inadmissibility for a crime involving moral turpitude. *See* Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Field Office Director, Santa Ana, California, denied the application. The Director concluded that the Applicant was inadmissible for having been convicted of a crime involving moral turpitude. The Director then determined that the Applicant had not established that his qualifying relative would experience extreme hardship if the waiver is denied.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred by not considering the favorable factors.

Upon *de novo* review, we will sustain the appeal as the Applicant has established extreme hardship to his spouse if the waiver is denied.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a crime involving moral turpitude, specifically theft. Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), provides that any foreign national convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible.

Individuals found inadmissible under section 212(a)(2)(A) of the Act may seek a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). Section 212(h) of the Act provides for a discretionary waiver if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter.

Decades of case law have contributed to the meaning of extreme hardship. 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). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; *see also Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was "no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects"). 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); *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). 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).

II. ANALYSIS

The Applicant does not contest the finding of inadmissibility for a crime involving moral turpitude, a determination supported by the record.[1] The issue on appeal is whether the Applicant's spouse would experience extreme hardship, whether she remains in the United States without him or accompanies him to Canada. The Applicant claims that his spouse will suffer emotional and financial hardship if she remains in the United States without him. The claimed hardship to her from relocation is the emotional hardship of separation from her mother in the United States.

A. Waiver

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 his spouse. In support of the hardship claim, the Applicant submitted with the Form I-601, a statement from his spouse, financial documentation, and his mother-in-law's medical documentation. On appeal, he submits a psychological evaluation of his spouse, his spouse's medical documentation, a work-related e-mail, and financial documentation.

[1] The Applicant has a 2006 conviction in Canada for five counts of Theft Under $5,000. For each count, he was ordered to serve a 12-month probation term, which was to run concurrently, and to pay a fine and make restitution. The Applicant is thus inadmissible under section 212(a)(2)(A)(i)(I) of the Act for a crime involving moral turpitude.

The Applicant's spouse claims that if she remains in the United States without him, she will suffer emotional and financial hardship. She stated that she has a close relationship with the Applicant and that they have been together for 8 years. She maintained that she cannot function normally at home or work from anxiety about the possibility of separation from him. She declared that she has a tumor, rashes, and heart irregularities, all of which are from stress over the Applicant's situation. She further stated that her employer placed her on temporary leave because she had difficulty handling job assignments. The Applicant's spouse indicated that she and the Applicant purchased a home together and intended for her mother to move in with them. She stated that her mother has had serious medical conditions for a decade, and she was to care for her. Medical documentation for her mother establishes that the removal of a brain mass damaged her cognitive abilities, and she had a coronary artery bypass graft in 2010. Her mother also suffers from gastroesophageal reflux disease, arthritis, chest and lower back pain, dyslipidemia, and hypertension.

In support of the hardship claim to his spouse, the Applicant submitted a psychological evaluation and medical documentation of his spouse, which establish that she will suffer significant hardship if she remains in the United States without him. The evaluators state that his spouse's depression, migraines, and panic attacks began in 2014, when the Applicant's immigration case was denied. They state that his spouse fears that her panic attacks have impacted her job performance. The evaluators indicate that the Applicant's spouse reported that her life has been greatly affected by the revolution in Iran and the loss of her family members, who were disappeared or killed. The evaluators state that the Applicant's spouse needs unity in her life and perceives her marriage to the Applicant and his physical presence as paramount to her wellbeing. They indicate that his spouse is unable to cope with pressure and is at risk for further psychological deterioration if separated from the Applicant. The evaluators state that his spouse had received outpatient mental health services in 2015, and they recommend that she continue with these services.

The medical documentation establishes that his spouse's anxiety over his immigration situation has adversely impacted her physical health. The documentation shows that since 2014, she has suffered from anxiety and depression and that her stress was "tremendously" high after she was told that her spouse was to be deported. The letter from her physician stated that she suffers from gastritis and stress-related stomach inflammation. Medical documentation further shows that in 2015, she had a cardiac catheterization procedure for inexplicable chest pain; and five days later, was hospitalized for leg, abdominal, and groin pain.

The medical records and psychological evaluation demonstrate that the Applicant's spouse suffers from anxiety and depression and that her ongoing stress over the possibility of separation from him has negatively affected her mental and physical health. When these hardship factors are considered in their totality, they establish that the Applicant's spouse would experience extreme hardship if she remains in the United States without him.

B. Discretion

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 in this case are the hardship to the Applicant's spouse if the waiver application is denied, and the passage of 10 years since the criminal actions which led to his inadmissibility. The adverse factors are the Applicant's conviction for obstruction of a peace officer in 1992, his criminal conviction in 2006 for theft, an outstanding fine for his theft offense, and his unlawful status and employment in the United States. When the favorable factors are considered together, they outweigh the adverse factors such that a favorable exercise of discretion is warranted.

III. CONCLUSION

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. He has established that his spouse would experience extreme hardship if she remains in the United States without him and that he merits a favorable exercise of discretion. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of E-A-Z-*, ID# 17246 (AAO July 1, 2016)