U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-A-B-

DATE: JULY 11, 2016

APPEAL OF KENDALL FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Colombia, seeks a waiver of inadmissibility for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). 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 relatives.

The Kendall Field Office Director, Miami, Florida, denied the application. The Director concluded that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. The Director then determined that the Applicant had not established that denial of admission would result in extreme hardship to his spouse, the only qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant claims that the Director erred in finding that he had not established extreme hardship to his spouse and children if the waiver is denied.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a fraud or misrepresentation, specifically for failing to disclose prior arrests on his Form I-485, Applicant to Adjust Status, and at his 2001 adjustment of status interview.

Section 212(a)(6)(C)(i) of the Act renders inadmissible any foreign national 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 the Act.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national.

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 only issue presented on appeal is whether the Applicant has demonstrated extreme hardship to his spouse if the waiver is denied. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record. The claimed hardships to his spouse are the loss of emotional and financial support for the family due to separation from the Applicant. The evidence in the record, considered both individually and cumulatively, does not establish that the Applicant's spouse would experience extreme hardship. Because there is no showing of extreme hardship, we will not address whether the Applicant merits a waiver as a matter of discretion.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. Specifically, on his application to adjust status and in a September 2001 interview related to that application, the Applicant did not disclose two prior arrests for criminal sale and possession with intent to sell a narcotic drug. The Applicant's application to adjust status to lawful permanent residence was granted in September 2001, but the Director issued a notice of intent to rescind his permanent resident status on March 3, 2003, after finding the Applicant

inadmissible at the time of his adjustment of status under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. The Applicant failed to appear for rescission proceedings, and on December 15, 2005, an immigration judge rescinded his lawful permanent resident status.

The Applicant was arrested on [redacted] 1987, and charged with criminal sale of a narcotic drug and again arrested on [redacted] 1987, and charged with criminal possession with intent to sell and criminal sale of a narcotic drug. Charges associated with the first arrest were dismissed in [redacted] 1987, but charges resulting from the second arrest were not dismissed until [redacted] 2003, two years after the Applicant was granted lawful permanent resident status. On appeal, the Applicant contends that his failure to disclose his arrest record had been inadvertent and that he failed to appear for his immigration court hearing because he did not know about it, but provides no detail or objective evidence to support his contention.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Matter of S- and B-C*, 9 I&N Dec 436, 447 (BIA 1960 AG 1961). *See also Kungys v. United States*, 485 U.S. 759, 771 (1988) (holding that misrepresentations are material if either the applicant was ineligible on the true facts or if the misrepresentations had a natural tendency to influence the decision). Although the record shows that the Applicant's arrests did not result in convictions, by failing to disclose those arrests, including one for which charges were still pending at the time he adjusted his status, the Applicant cut off a line of questioning relative to his eligibility for the benefit sought. Therefore we find the Applicant's misrepresentation was material and concur with the Director's finding of inadmissibility.

B. Waiver

In this case, the Applicant must demonstrate that denial of the application would result in extreme hardship to his U.S. citizen spouse.[1] In support of his claim of hardship to his spouse, the Applicant submitted statements from his spouse and children, letters of support, his medical records, financial documentation, copies of his criminal record, civil documents, and country information on Colombia.

The Applicant's spouse claimed that if she remains in the United States without him, she will suffer emotional and financial hardship. In her statement the Applicant's spouse contends that it is important to have the Applicant with her since they have children, that he is hardworking and a good leader, and that he has always supported the family. She states that she and the Applicant share responsibility for caring for the children so that she and the Applicant can each work. Letters from

[1] Under section 212(i) of the Act only the United States citizen or lawful permanent resident spouse or parent of the foreign national are qualifying relatives. Children of a foreign national are not considered to be qualifying relatives for a waiver of this inadmissibility under this section.

two of the Applicant's children describe his support for them and state that he is a great family leader and that they and their mother would struggle without him. The statement by the Applicant's spouse does not provide further detail and the record contains no supporting evidence explaining any emotional hardships the Applicant's spouse would experience due to separation from the Applicant and how such emotional hardships would be outside the ordinary consequences of removal.

The Applicant contends that he is an active member of his church and respectable member of his community and that he provides emotionally and financially for his spouse and children. The Applicant states that he assists daily with his children and asserts that research shows separation from a parent can cause children to experience negative effects, including poor academic performance, depression, criminal involvement, and abuse of drugs or alcohol. Although the Applicant and his spouse state that they share childcare responsibilities, the record indicates that four of their five children are now adults and range in age from 18 to 27, while the youngest child is years old. It is not clear from the record the extent to which any hardship to the Applicant's children, four of whom are adults, would result in hardship to his spouse if he departs the United States.

Regarding financial hardship, the record contains little documentation and no complete list of family expenses and liabilities, or any assets, to establish that the Applicant's spouse would experience financial hardship in his absence. On the Form G-325A, Biographic Information, signed on February 22, 2013, the Applicant indicated that he worked as a referee and a self-employed handyman, but the Applicant does not detail his specific financial contribution to the household. The record contains a tax return and employment letter that show that the Applicant's spouse was employed as a full-time nursing assistant and was the household's primary wage earner. In support of the waiver application, the Applicant submitted utility and bank account statements and a mortgage statement. The mortgage statement shows the Applicant's address but is not addressed to the Applicant or his spouse, but rather appears to be addressed to the spouse's mother, whose name also appears on a utility bill.

We recognize that separation from a spouse often creates hardship for both parties. However, there is insufficient evidence in the record to find that the Applicant's spouse would suffer hardship beyond the common results of removal upon separation from the Applicant.

As for relocation, the record does not establish that the Applicant's spouse would experience extreme hardship if she were to relocate to Colombia. Neither the Applicant nor his spouse asserts that she would experience hardships from relocation. The record contains a U.S. Department of State Country Report on Human Rights Practices for 2013 for Colombia. This report describes human rights violations in Colombia, but the Applicant has not addressed how these conditions would specifically affect his spouse. We take notice that the U.S. Department of State continues to issue a travel warning for Colombia and states that despite significant decreases in overall crime, continued vigilance is warranted due to an increase in recent months of violent crime and that terrorist and criminal activities remain a threat in different parts of the country. *U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Colombia*, April 5, 2016. The Applicant has

not asserted hardship upon relocation to Colombia, nor indicated where he and his spouse would reside were they to return to Colombia, his spouse's native country. The record therefore does not support a finding of hardship if the Applicant's spouse relocates to Colombia.

The record contains references to hardship the Applicant's children would experience if the waiver application were denied. 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, the Applicant's spouse is the only qualifying relative 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 the Applicant's spouse. The spouse states that she and the Applicant share the responsibility of caring for their children so each can work, and the children state that the Applicant is a great leader and always there to support them. As stated above, four of the Applicant's five children are now adults, and three of them are in their twenties. Although we recognize that any separation from a loved one creates hardship for a family, the statements by the spouse and her children provide little detail and the record contains little documentation to establish hardship to the Applicant's children. In this case the record contains insufficient evidence that the Applicant's children would suffer hardship that would result in extreme hardship to the Applicant's spouse if the waiver application were denied.

Here the record does not contain sufficient evidence to show that the hardships faced by the Applicant's U.S. citizen spouse, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

C. Discretion

As the Applicant has not demonstrated extreme hardship to a qualifying relative, we need not consider whether the Applicant warrants a waiver in the exercise of discretion.

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 not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of R-A-B-*, ID# 16316 (AAO July 11, 2016)