



U.S. Citizenship
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DATE: AUG 06 2012 Office: KINGSTON, JAMAICA

FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

The record indicates that on May 28, 2004 the applicant attempted to gain admission into the United States with a photo-substituted nonimmigrant visa. Upon questioning, the applicant admitted under oath that he obtained the fraudulent visa for 200 Jamaican dollars. On May 29, 2004, he was expeditiously removed under section 235(b)(1) of the Act and barred from entering the United States for five years. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought admission to the United States through fraud or misrepresentation. The applicant does not contest his inadmissibility.

Section 212(i) 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*, 21 I&N Dec. 296 (BIA 1996). In the present case, the applicant's U.S. citizen spouse is the only qualifying relative for a waiver under section 212(i) of 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, 631-32 (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).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear, "[r]elevant factors, though not extreme in themselves, must be considered

in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

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., *In re 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, the applicant states that his spouse is “ill and her condition has been worsening” since her 2009 surgery. He states that she needs constant assistance and she would be unable to receive the care she needs if she relocates to Jamaica. He also states that his spouse’s employment was terminated while she was in physical rehabilitation, and she can work only part-time. He supports his wife and her children, but finds it difficult to maintain two households.

The applicant’s spouse states that she had two neck surgeries since she married the applicant and had to go through recovery with her son’s assistance. She needs the applicant’s assistance to care for her and to alleviate the burden of doing so on her son. She states that she was alone at home when she had an adverse reaction to a medication and “passed out.” She also indicates that she miscarried four times due to high stress.

In his May 19, 2010 letter, [REDACTED] indicates that the applicant’s spouse has a chronic cervical strain syndrome with chronic myofascitis as a result of an accident and two surgical procedures performed on her neck. According to Dr. [REDACTED] the applicant’s spouse has limited mobility and flexibility in her neck and her range of motion is “significantly restricted.” This causes her “persistent numbness in her right upper extremity.” He estimates her orthopedic disability at 85 percent.

Dr. [REDACTED] indicates that the applicant's spouse's physical therapy in 2008 was not successful. The applicant's spouse told her she has pain and stiffness in the cervical spine daily. She feels anxious and more irritable, has upsetting thoughts about the workplace accident that caused her medical condition, and has trouble sleeping at night. [REDACTED] reports that the applicant's spouse is more discouraged about her future and has had "thoughts of killing herself." She also states that the applicant's spouse's mental status exam indicates severe depression and adjustment disorder with mixed anxiety and depressed mood. [REDACTED] her treating neurosurgeon, states it would be beneficial for the applicant's spouse if the applicant were here to assist her.

In a 2009 letter, [REDACTED] a licensed physical therapist, indicates that the applicant's spouse is unable to effectively rotate and extend her neck and has restrictions during pulling, pushing and reaching activities involving her upper body. The applicant's spouse informed the therapist of constant aching pain at night and while performing basic daily activities.

The applicant's spouse's adult son states that it has been "considerably hard" on the applicant's spouse both emotionally and physically to not have the applicant with her. He takes her to doctor's appointments. He indicates that since his mother's second surgery in 2009, it has been more difficult for her not to have the applicant with her. The applicant's sisters-in-law also indicate that the applicant's spouse needs the applicant's help in her recovery from surgery.

Having reviewed the preceding evidence, the AAO finds it to establish that the applicant's spouse is experiencing extreme hardship resulting from separation. In reaching this conclusion, we note the applicant's spouse's emotional state, physical disability, and her need of others' assistance in her recovery and daily care. The record contains evidence that since her 2009 surgery, the applicant's spouse's mobility has been severely limited and her ability to perform daily activities has significantly declined. The record establishes that she needs the applicant to receive reliable care. Additionally, the record indicates that the applicant's spouse has severe depression and has had suicidal thoughts; she therefore needs the applicant's emotional support.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if she were to relocate to Jamaica. The applicant's spouse has had two neck surgeries. She gained no relief from physical therapy, and her mobility has significantly declined since her last surgery; therefore, the process of relocating would be difficult for her due to her physical disabilities and cause her extreme hardship. We also note that the Department of State indicates in its Country Specific Information report about Jamaica, dated November 17, 2011, that serious medical problems requiring hospitalization or medical evacuation to the United States can cost thousands of dollars. Furthermore, the applicant's spouse is anxious and depressed, and relocating would negatively impact her emotional well-being by being away from her close family in the United States.

When the specific hardship factors noted above and the hardships routinely created by the separation of families are considered in the aggregate, the AAO finds that the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied. The applicant has established statutory eligibility for a waiver of his inadmissibility under section 212(a)(6)(C) of the Act.

In that the applicant has established that the bar to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of 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 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).

See Matter of Mendez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "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).

The adverse factor in the present case is the applicant's material misrepresentation when he attempted to obtain admission to the United States, for which he now seeks a waiver. The mitigating factors include the applicant's U.S. citizen spouse; the extreme hardship to his spouse if the waiver application is denied; the applicant's spouse's ties to the United States; the absence of a criminal record for the applicant; and statements by family members about the applicant's good moral character.

The AAO finds that the immigration violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, when taken together, the mitigating factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.