U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-G-G-

DATE: DEC. 10, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of the Dominican Republic, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Newark Field Office, denied the application. We dismissed a subsequent appeal. The matter is now before us on motion to reopen and reconsider. The motion to reopen and reconsider will be granted, and the appeal will be sustained.

The record reflects that the Applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having obtained a visa, other documentation or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation.

The field office director found that the Applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 accordingly. On appeal, we determined that extreme hardship to a qualifying relative had not been established. The appeal was consequently dismissed.

On motion, filed on September 12, 2013 and received by this office on March 26, 2015, the Applicant submits the following: a brief, financial documentation, an affidavit from the Applicant's spouse, medical documentation, evidence establishing the Applicant's daughter's birth in 2013, documentation pertaining to the Applicant's step-son, family photographs, internet articles regarding bariatric lap band surgery, and information about country conditions in the Dominican Republic. In addition, we received supplemental documentation in support, which included documentation regarding medical and academic issues pertaining to the Applicant's step-son. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien 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 this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General (Secretary) that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien…

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the Applicant. The Applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the Applicant or the children can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

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).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[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.*, *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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 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.

On appeal, we determined that the Applicant had not established that his U.S. citizen spouse would experience emotional and financial hardship were she to remain in the United States while the Applicant relocated abroad due to his inadmissibility. Specifically, we determined that the record did not establish that the emotional hardship for the Applicant's spouse would be beyond the normal hardships associated when a spouse relocates abroad due to inadmissibility. As for the financial hardship referenced, we found that no documentation has been provided on appeal establishing the Applicant's spouse's income and expenses and assets and liabilities, and the specific financial contributions being made by the Applicant, to establish that his relocation would cause his wife financial hardship. Alternatively, we noted that the Applicant had not established that he would be unable to obtain gainful employment abroad that would permit him to assist his wife financially should the need arise. Finally, we noted that the Applicant had not established that his wife's relatives would be unable to assist the Applicant's spouse, emotionally and/or financially.

On motion, the Applicant's spouse has submitted an affidavit outlining the hardships she will experience were her husband to relocate abroad. To begin, the Applicant's spouse states that although she was employed, she had to go on disability due to having bariatric lap band surgery, and

the amount she receives is not enough to cover the regular cost of living. She notes that in addition to the financial hardship resulting from the surgery, she is unable to lift more than five pounds until recovery is complete, thereby making it difficult to care for her daughter on her own. Moreover, the Applicant's spouse states that her mother and grandmother currently live with her and the Applicant and are dependent on them, and she claims that without the Applicant, she will not be able to assist them on her own.

In support, evidence that the Applicant and his spouse had a child in 2013 has been submitted. In addition, the Applicant has provided documentation concerning his spouse's surgery and the disability pay she has been receiving as a result. Further, letters from a physician concerning the Applicant's spouse's mother and grandmother confirm that the Applicant's spouse covers their needs and provides assistance for all activities of daily living. In addition, the Applicant has submitted financial documentation indicating he earned more than half of the family's income for 2012 to establish his past financial contributions to the family. Finally, the Applicant has submitted documentation establishing that his step-son, born in 2008, is experiencing vision problems and hearing loss, had to have surgery in June 2014 as a result, and has been given special accommodations in school. Based on a totality of the circumstances, the Applicant has established on motion that his spouse will experience extreme hardship were she to remain in the United States while he relocates abroad as a result of his inadmissibility.

With respect to relocating abroad to reside with the Applicant as a result of his inadmissibility, we determined on appeal that the Applicant had not provided any supporting documentation to establish that his wife would experience extreme hardship were she to relocate to the Dominican Republic to reside with the Applicant.

The record reflects that the Applicant's U.S. citizen spouse was born and raised in the United States. Were she to relocate to the Dominican Republic to reside with the Applicant she would have to leave her relatives, including her mother and grandmother, who are dependent on her for their daily care; her community; affordable and effective medical treatment by the physicians familiar with her treatment plan; and her employment, and she would be concerned for her and her children's well-being in the Dominican Republic. Finally, the record establishes that the Applicant's step-son is fully integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). We find *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the Applicant's step-son at this stage of his education and social development, in light of his documented hearing and vision issues and the resultant academic accommodations, and relocate to the Dominican Republic would constitute extreme hardship to him, and by extension, to the Applicant's spouse, the only qualifying relative in this case. The Applicant has thus established on motion that his wife would suffer extreme hardship were she to relocate abroad to reside with the Applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the Applicant has established that his U.S. citizen spouse would suffer extreme hardship were the Applicant unable to reside in the United States. Accordingly, we find that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien 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). The Board has further stated:

> 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-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). This office 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 favorable factors in this matter are the extreme hardship the Applicant's U.S. citizen spouse and children would face if the Applicant were to relocate to the Dominican Republic, regardless of whether they accompanied the Applicant or stayed in the United States; the Applicant's community ties; the Applicant's employment in the United States; business ownership; the apparent lack of a criminal record; and the payment of taxes. The unfavorable factors in this matter are the Applicant's entry to the United States by fraud or willful misrepresentation and periods of unlawful presence and employment while in the United States. Although the Applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted.

The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the Applicant has met his burden.

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

Cite as *Matter of R-G-G-*, ID# 13598 (AAO Dec. 10, 2015)