U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-Y-

DATE: DEC. 14, 2015

APPEAL OF INDIANAPOLIS FIELD OFFICE DECISION

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

The Applicant, a native and citizen of China, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Indianapolis Field Office, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Director determined that the Applicant was inadmissible for seeking admission into the United States by fraud or willful misrepresentation. The Director further found that the Applicant had not established that refusal of admission would result in extreme hardship to a qualifying relative. The Form I-601 was denied accordingly.

On appeal, the Applicant submits a brief and copies of previously submitted documents. The entire record was reviewed and considered in rendering a decision on the appeal.

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 further provides:

> (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 [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.

Section 212(i) of the Act provides:

> The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 [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.

On appeal, the Applicant asserts that he did not present a fake passport when he attempted to procure entry into the United States. He maintains that he told the pilot he wanted to apply for asylum, and the pilot walked him to the inspection area, where the Applicant stated that he "turned himself in." The Applicant further contends that even if he had not voluntarily admitted to having a fake passport, he qualifies for a waiver of inadmissibility.

The record demonstrates that the Applicant attempted to procure admission into the United States by presenting a Japanese passport. The Applicant admitted in a sworn statement on April 22, 1994, that he attempted to enter the United States by presenting a Japanese passport which he purchased from a man he met in China. The Applicant admitted in the statement that he knew that using the Japanese passport to enter the United States was against the law. Furthermore, the immigration inspector's records indicate that the Applicant presented a photo-switched Japanese passport and claimed to be a visitor for pleasure. The primary inspector referred him to secondary inspection for further questioning.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, the evidence in the record establishes that the Applicant falsely claimed that he was a national of Japan in an attempt to procure admission as a visitor for pleasure into the United States. It was not until he was referred to secondary inspection that the Applicant revealed his true identity. Because the Applicant attempted to enter the United States using a fraudulent Japanese passport, he is inadmissible for seeking admission into the United States by fraud or willful misrepresentation.

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 record establishes that the Applicant's lawful permanent resident spouse is the only qualifying relative in this case. Hardship to the Applicant or his 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).

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. . . [,] and while an analysis of a given application includes a review of all claims put forth in light of the facts and circumstances of a case, such analysis does not extend to discovery of undisclosed negative impacts." *Matter of Ngai,* 19 I&N Dec. 245, 246-47 (BIA 1984). 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). 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).

The Applicant's lawful permanent resident spouse asserts that she will experience extreme hardship if she remains in the United States while her spouse relocates abroad as a result of his inadmissibility. The Applicant's spouse indicates that she married the Applicant in China in 1981, and they had three children together. She states that the Applicant came to the United States in 1994, the Applicant was not able to establish himself, and three years later they divorced. She declares that in 2001 she fled from China due to persecution and was granted asylum in the United States. Her children came to the United States in 2007 and the family opened a restaurant in 2008. The Applicant's spouse declares that she eventually saw the Applicant and realized that she still cared for him, so in October 2013, they remarried. She states that she now spends her time at the restaurant they own and taking care of her grandchildren. The Applicant's spouse maintains that the Applicant runs their restaurant and is the sole chef, and she is anxious that if he were to be deported her business would fail.

In support of emotional and financial hardship, the Applicant has submitted a mental health assessment from a licensed psychologist. The assessment establishes that the Applicant's spouse is experiencing increased depression and anxiety regarding the Applicant's impending deportation, and that his spouse further suffers from Post-Traumatic Stress Disorder (PSTD) caused by the traumatic events she experienced in China. The evaluator states that the Applicant's spouse's PSTD symptoms have subsided but she will suffer a relapse were the Applicant to be deported to China. The Applicant has also provided evidence establishing that his spouse was granted asylum in the United States from China. He further provided company income tax records, a joint income tax return, business records, and evidence of his spouse's household expenses. Based on a totality of the circumstances, the record establishes that the Applicant's spouse will experience extreme hardship if she remains in the United States while the Applicant relocates abroad.

In regard to relocation abroad with the Applicant as a result of his inadmissibility, the mental health assessment indicates that the Applicant's spouse states that she is fearful of Chinese officials, and that the Applicant's spouse experienced and witnessed significant violence in China and still suffers

from depression and anxiety due to those traumatic events. The record establishes that the Applicant's spouse has been residing in the United States for over a decade, and long-term separation from her children and grandchildren and her community, and loss of her family business will cause her significant hardship. In addition, the Applicant's spouse would be concerned for her emotional and physical well-being as a result of the past trauma she experienced in China, a country from which she left to obtain asylum in the United States. Based on a totality of the circumstances, the record establishes that the Applicant's spouse would experience extreme hardship if she relocated with the Applicant as a result of his inadmissibility.

The Applicant has established that the bar to admission would result in extreme hardship to his qualifying relative spouse. We now turn to a consideration of 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 matter are the extreme hardship the Applicant's lawful permanent resident spouse, three U.S. citizen children and multiple grandchildren would face if the waiver application were denied, the Applicant's business and home ownership in the United States, payment of taxes, his community ties, the Applicant's apparent lack of a criminal record, his spouse's grant of asylum in the United States, and the passage of more than 21 years since the Applicant's fraud or

willful misrepresentation with respect to his attempted entry to the United States. The unfavorable factors in this matter are the Applicant's fraud or willful misrepresentation, as outlined in detail above, the Applicant's placement in removal proceedings, his failure to depart under the removal order, and his periods of unlawful presence and employment in the United States. In this case, when the favorable factors are considered together, they outweigh the adverse factors such that a favorable exercise of discretion is warranted.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has met that burden.

ORDER: The appeal is sustained.

Cite as *Matter of D-Y-*, ID# 14382 (AAO Dec. 14, 2015)