U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-J-G-

DATE: DEC. 16, 2015

APPEAL OF LOS ANGELES FIELD OFFICE DECISION

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

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

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation. The Applicant filed a Form I-601 in order to reside in the United States with his lawful permanent resident spouse. The Director determined that the Applicant had not established that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The Form I-601 was denied accordingly.

In support of the instant appeal, the Applicant submits a statement and supporting documentation. 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 provides that:

> 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 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 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.

The record reflects that the Applicant attempted to enter the United States with a fraudulent passport in November 1991. Based on this information the Director determined the Applicant to be inadmissible under section 212(a)(6)(C) of the Act for fraud or misrepresentation.[1]

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 lawful permanent resident spouse is the only qualifying relative in this case. Hardship to the Applicant or his U.S. citizen adult daughters 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 contends that his lawful permanent resident spouse will experience emotional, medical, and financial hardship were she to remain in the United States while he departs the United States as a result of his inadmissibility. The Applicant first maintains that he and his spouse have been together for over thirty years and have two U.S. citizen daughters together and long-term separation will cause his spouse emotional hardship. The Applicant further explains that his wife suffers from numerous medical conditions, including diabetes, high cholesterol, and thyroid problems, and needs his daily support to deal with her health conditions. Finally, the Applicant

[1] The Director references other instances of fraud or misrepresentation by the Applicant. The Director also notes many "discrepancies" in the record. As we have determined that the Applicant is subject to section 212(a)(6)(C)(i) of the Act and requires a waiver of inadmissibility under section 212(i) of the Act, it is not necessary to evaluate whether the additional incidents referenced by the Director also amount to fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act.

states that although his wife is employed, she relies on his income to make ends meet, and were he to relocate abroad, his spouse would be unable to support herself and at risk of losing their home.

In support, medical documentation has been provided concerning the Applicant's spouse's medical conditions. Further, the record establishes that the Applicant's spouse is reliant on her husband for medical coverage through his employment. Evidence of the Applicant's gainful, long-term employment in the United States has also been submitted. In addition, financial documentation has been provided to establish the Applicant's spouse depends on her husband's income to make ends meet. Finally, letters in support have been provided by the Applicant's daughters outlining the hardships they and their mother would experience were the Applicant to relocate abroad. The Applicant has thus established that his spouse would experience extreme hardship were she to remain in the United States while the Applicant relocates abroad due to his inadmissibility.

In regard to relocating abroad to reside with the Applicant, the Applicant's spouse contends that she has been residing in the United States since 1984, and long-term separation from her daughters, three brothers, four sisters, extended family, the medical professionals who treat her, and her employment would cause her extreme hardship. She further maintains that she would be concerned for her safety and well-being as a result of the problematic country conditions in El Salvador, including criminal activity, inadequate health care, and the lack of employment opportunities.

The record reflects that the Applicant's spouse has been residing in the United States for over thirty years. Were she to relocate to El Salvador to reside with the Applicant, she would have to leave her children, her siblings, her community, the medical professionals familiar with her diagnosis and treatment plan, and her gainful employment, and she would be concerned for her safety and well-being in El Salvador. We note that the U.S. Department of State has issued a travel warning for El Salvador to inform U.S. citizens about the security situation in the country. Based on a totality of the circumstances, the record establishes that the Applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the Applicant due to his inadmissibility.

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 unfavorable factors in this matter are the Applicant's attempted entry to the United States by fraud or willful misrepresentation; the Applicant's failure to appear at his exclusion proceedings and the exclusion order made against the Applicant in absentia; the Applicant's failure to disclose the manner in which he entered the United States in 1991 and his exclusion order when he applied for Temporary Protected Status from 2001 to 2013 and when he applied for Advance Parole in 2013; and periods of unlawful presence and employment while in the United States. The favorable factors in this matter are the extreme hardship the Applicant's lawful permanent resident spouse and U.S. citizen daughters would face if the Applicant were to relocate to El Salvador, regardless of whether they accompanied the Applicant or stayed in the United States; the Applicant's community ties; the Applicant's long-term residence and gainful employment in the United States; home ownership; support letters on behalf of the Applicant; the payment of taxes; and the apparent lack of a criminal record.

The immigration violations committed by the Applicant are serious in nature. Nonetheless, we find that the Applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's 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 J-J-G-*, ID# 16464 (AAO Dec. 16, 2015)