U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-H-N-K-A-

DATE: DEC. 17, 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 Ghana, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Washington Field Office, denied the application. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before us on motion. The motion to reopen will be granted and the appeal will be sustained.

The Applicant was found to be inadmissible to the United States under 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 procured admission to the United States through fraud or misrepresentation. The Applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen son, born in 2006.

In a decision dated August 22, 2013, the Director concluded that the Applicant had not established that a bar to his admission to the United States would result in extreme hardship. The Director also determined that the Applicant's waiver of inadmissibility should be denied as a matter of discretion. The Form I-601 was denied accordingly.

On appeal, we determined that the record did not contain sufficient evidence to establish that the hardships faced by the Applicant or his son, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The appeal was subsequently dismissed.

On motion the Applicant asserts that he and his son will suffer extreme hardship if he cannot remain in the United States. With the motion the Applicant provides additional evidence to support his assertion, including a letter from his son's mother; receipts indicating the Applicant's financial support of his son; financial documentation, including evidence of the Applicant's gainful employment; affidavits from the Applicant, family members, friends, and his church; country information for Ghana; and family photographs. 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.

The record reflects that the Applicant entered the United States on or about April 4, 2001, with a fraudulent passport. Based on this information the Director found the Applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or misrepresentation. The Applicant does not contest his inadmissibility on motion.

Section 212(i) of the Act provides:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the [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 [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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

Sec. 204(a)(1)(A)(iii)(I) of the Act provides:

> An alien who is described in subclause (II) may file a petition with the [Secretary] under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the [Secretary] that--
>
> > (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
> >
> > (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.
>
> (II) For purposes of subclause (I), an alien described in this subclause is an alien--
>
> > (aa)(AA) who is the spouse of a citizen of the United States;

The record establishes that the Applicant filed the Form I-360 Petition for Amerasian, Widow or Special Immigrant as a self-petitioning battered spouse of a United States citizen on December 28, 2010, and the petition was approved on January 20, 2012. Pursuant to section 212(i) of the Act, as the beneficiary of an approved I-360, the Applicant must demonstrate extreme hardship to himself or a qualifying relative. 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-Moralez,* 21 I&N Dec. 296 (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).

As noted above, in dismissing the appeal we concluded that the record did not contain sufficient evidence to show that the hardships faced by the Applicant or his son, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. With respect to the emotional hardships referenced on appeal, we determined that affidavits from the Applicant's mother, siblings and friends, as well as a psychological assessment, provided little detail regarding the type of support the Applicant required or received in the United States. In addition, we noted that although the Applicant asserted that Ghana lacked adequate resources for victims of abuse and provided reports indicating the same, the record did not reflect whether mental health support was currently necessary or whether it would become necessary should he relocate.

We also found on appeal that although the Applicant's family and friends claimed that he financially assisted his son, the Applicant submitted no documentary evidence to confirm his financial support or to establish that his son required his support. We determined that the record provided no details regarding the nature and extent of psychological hardship the Applicant's son could experience if the Applicant were to relocate, that the record lacked information describing how leaving his school would cause the Applicant's son hardship, and that it did not describe the nature of his relationships with his friends and family in the United States. We acknowledged that living in Ghana would present challenges and adjustments for the Applicant's son, but that it was unclear that these would

cause his son hardship that, considered in the aggregate with other evidence of hardship, would amount to extreme hardship.

On motion the Applicant asserts that his work, church, family, and friends have helped him cope with his abusive marital relationship and that were he to relocate abroad, he would experience emotional hardship due to long-term separation from his support network. The Applicant also contends that he and his son are emotionally close, that he provides financially for his son, and that without the Applicant his son would be devastated and may become depressed and disinterested in school or activities. The Applicant also maintains that in Ghana he does not have a strong emotional support network, and that as Ghana suffers high unemployment there is no guarantee he could find work given the length of time he has been out of the country. The Applicant asserts that he has worked hard to be successful in the United States and that losing it all would be emotionally difficult.

In support, the Applicant has submitted a statement from the son's mother affirming that the Applicant provides her with financial assistance for their son in addition to purchasing other items. She further asserts that the Applicant and his son are emotionally close, with the Applicant involved in his son's life. She contends that their son would struggle without the Applicant's financial and emotional support. The Applicant submits tax and employment information along with receipts for money transfers and item purchases for his son.

In addition, the Applicant submits an updated affidavit from a brother maintaining that he and the Applicant are in daily contact, that he believes the Applicant is progressively more depressed, that he struggles to deal with the mother of his son, but that he provides for his son despite relations with his mother. The brother also asserts that Ghana is in economic hardship with severe health concerns and poor infrastructure, and contends that the Applicant's son would suffer emotional hardship if he left his school, friends, and family in the United States to live in Ghana.

The Applicant has also submitted updated affidavits on motion from relatives and friends describing the Applicant's contact with them, his abusive relationship with his ex-spouse and how he confided in them, and how the Applicant provides and cares for his son. A letter from the Applicant's pastor confirms his involvement in church activities.

Affidavits from relatives and friends of the Applicant also refer to poor economic conditions in Ghana, contend that the Applicant could not support his son from there, and maintain that he would have a difficult time fitting in since he has been away for many years. The Applicant asserts that as Ghana is in West Africa it is close to Ebola-affected countries and submits a news article about the possibility of Ebola in Ghana.

The record establishes that the Applicant has been residing in the United Sates since 2001, and his son was born here. Were the Applicant to relocate abroad, he would have to leave his family and friends, his community, his gainful employment, his church, and the bond he has developed with his son following an abusive relationship with his son's mother, and he would likely be unable to provide financially for his son. The record further reflects that were the Applicant to relocate abroad

while his son remains in the United States, the record establishes that his son would experience emotional and financial hardship due to long-term separation from his father. Alternatively by relocating to Ghana with his father, the Applicant's son would be forced to leave his education and social development at an important period, and would be separated from his birth mother, which would cause extreme hardship to the son, and by extension, to the Applicant.

A review of the documentation in the record, when considered in its totality, reflects that the Applicant has established that he and his U.S. citizen child would suffer extreme hardship were the Applicant unable to reside in the United States. 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 case are the hardships the Applicant and his son would face if separated or if they relocated to Ghana, approval of the Applicant's Form I-360, the Applicant's residence in the United States since 2001, his history of gainful employment and payment of taxes, his expressed remorse for procuring entry to the United States by fraud or willful misrepresentation, his church activities, and support letters from family members, friends, and his church. The adverse factors include the Applicant's entry to the United States through fraud or willful misrepresentation, periods of unlawful presence and employment in the United States, and a 2009 conviction for disorderly

conduct. 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 application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

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

Cite as *Matter of P-H-N-K-A-*, ID# 13569 (AAO Dec. 17, 2015)