U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-K-

DATE: DEC. 23, 2015

APPEAL OF SANTA ANA FIELD OFFICE DECISION

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

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

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 procuring lawful permanent residence in the United States through fraud or misrepresentation. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States.

In a decision dated October 22, 2014, the Director found that the Applicant had not established that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

On appeal, filed on November 18, 2014, and received by this office on June 8, 2015, the Applicant requests his application be reviewed and states that his case before an immigration judge has been closed. With the appeal the Applicant submits a copy of an order administratively closing removal proceedings against him to allow USCIS adjudication of his application to adjust status. 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 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 on July 29, 1997, the Applicant applied to adjust status as a derivative beneficiary based on an approved Form I-140, Immigrant Petition for Alien Worker, for his spouse. The Applicant adjusted to lawful permanent resident status on May 4, 2000. It was later determined that the Applicant was in fact divorced at the time he filed the application to adjust status claiming to be a derivative beneficiary. The record further reflects that approval of the Form I-140 on which the Applicant adjusted status was revoked on March 8, 2004. Based on this information the Director determined that the Applicant was inadmissible for fraud or misrepresentation. Despite the fact that the record indicates that removal proceedings were administratively closed as of January 15, 2010 for "USCIS adjudication of I-130/I-485," as noted on the Order of the Immigration Judge, the Applicant remains inadmissible to the United States for fraud or willful misrepresentation. The Applicant has not contested the finding of inadmissibility.

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. 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).

In a statement dated August 5, 2014, the Applicant asserts that he depends on his spouse to cover family expenses, and that has put pressure on the family's finances and has caused stress. The

Applicant further contends that he and his family have a strong bond and that his spouse now has health problems, including diabetes and high blood pressure, and that she is unable to work as much as she had in the past, which causes them to struggle with their mortgage.

On appeal the Applicant has not submitted supporting documentation concerning any emotional hardship his U.S. citizen spouse would experience due to separation from him, or explaining any health issues that the spouse experiences, as referenced by the Applicant. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, with respect to the financial difficulties referenced, the Applicant has not submitted any documentation on appeal establishing his and his spouse's current income, expenses, assets, and liabilities or his spouse's overall financial situation to establish that without the Applicant's physical presence in the United States, the Applicant's spouse will experience financial hardship. Here the record lacks details and supporting documentation to establish that the Applicant's spouse will experience extreme hardship as a consequence of being separated from the Applicant.

With respect to relocating abroad, the Applicant has made no assertion nor submitted any evidence that his spouse would experience extreme hardship were she to relocate abroad to reside with him due to his inadmissibility.

In the present case the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the Applicant has not established extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. As the Applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of M-K-*, ID# 14641 (AAO Dec. 23, 2015)