U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-B-P-

DATE: NOV. 5, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Colombia, 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, New Jersey, denied the application. We dismissed the appeal. The matter is now before us on motion. The motion to reopen will be denied.

The Director found that the Applicant did not establish extreme hardship to 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 and dismissed the appeal accordingly.

We note that on the Form I-290B, Part 2, the Applicant checked box B, which states in part, "I am filing an appeal." Nothing in the regulations permits an appeal of an unfavorable AAO decision. When an unfavorable decision is issued by us, the Applicant may file a motion to reopen or a motion to reconsider, as outlined in detail in 8 C.F.R. § 103.5.

On the Form I-290B, the Applicant asserts that his misrepresentation on his visa application form was immaterial; he was unaware of the misrepresentation when he signed the form; and he was unable to review the application carefully due to the speed at which his employer completed the application. He also asserts that we failed to consider the hardship factors in the aggregate, including his spouse not being from Colombia, safety issues in Colombia, lack of any family ties in Colombia, his spouse's care for her sick mother, and her psychological and physical deterioration.

A motion to reopen must state new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). We find that the requirements of a motion to reopen have been met.

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

> (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.

As we discussed when we dismissed the appeal, the record establishes that the Applicant misrepresented his marital status when he applied for a P1 Visa in July 2008. Specifically, the Applicant claimed to be married on the Form DS-156 when in reality he was unmarried. The Form DS-156 was completed in Spanish, the Applicant's native language, listed the name of a spouse, and contained the Applicant's signature.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

> A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States,* 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

By stating that he was married when applying for a nonimmigrant visa, the Applicant led the American Embassy in [redacted] to believe that he had close family ties, namely, a spouse, in his home country. By not disclosing he was unmarried, he cut off a line of inquiry which was relevant to the Applicant's request for the visa. On appeal we concluded that the record established that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation with respect to his July 2008 visa application.

On motion, the only new claim related to the misrepresentation issue is the claim that the Applicant was unable to review the application carefully due to the speed at which his employer completed the application. It is unclear how the speed at which the application was completed would affect his ability to review the form once it was completed and he had to sign it. In addition, as we noted when we dismissed the appeal, the Applicant has not shown that he was lacking in capacity to exercise judgment and was thus unable to review the application prior to signing. 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 E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). On motion, we affirm our previous finding that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a visa and subsequent admission to the United States through fraud or willful misrepresentation.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now Secretary of the Department 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 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.

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. Hardship to the Applicant can be considered only insofar as it results in hardship to a qualifying relative, in this case the Applicant's spouse. If extreme hardship to a qualifying relative is established, the Applicant is statutorily eligible for a waiver and U.S. Citizenship and Immigration Services 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 U.S. 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. I.N.S.*, 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 applicant 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.

In our November 26, 2012, decision, we determined that with respect to the Applicant's spouse remaining in the United States while the Applicant relocated abroad, extreme hardship had not been established. We noted that no documentation was submitted from a treating physician to establish that the Applicant's spouse suffered from any medical condition. Moreover, no documentation was submitted to illustrate how the Applicant's spouse's stated emotional and medical conditions were affecting her daily life. Moreover, no documentation was submitted to illustrate the financial hardship that the Applicant's spouse would experience in her husband's absence.

We further determined that the Applicant had not established that his spouse would suffer extreme hardship should she relocate to Colombia to reside with the applicant. We noted that no evidence was submitted to support the assertion that Colombia was a dangerous country and the Applicant's spouse feared for her safety. Additionally, we noted that no evidence was submitted to support the

Applicant's spouse's contention that she cared for her mother. The Applicant's spouse also had not established what hardship she would suffer if she were no longer able to care for her mother.

The only new claim with the Form I-290B related to hardship is that the Applicant's spouse does not have any family ties in Colombia. No supporting documentation has been provided establishing that lack of family ties in Colombia will cause the Applicant's spouse extreme hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Nor have the above findings been addressed by the Applicant on motion. On motion, the Applicant has not established extreme hardship.

The record, reviewed in its entirety, does not support a finding that the Applicant's U.S. citizen spouse will face extreme hardship if the Applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the Applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although we are not insensitive to the Applicant's spouse's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law.

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 not been met.

ORDER: The motion to reopen is denied.

Cite as *Matter of W-B-P-*, ID# 14273 (AAO Nov. 5, 2015)