



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF K-D-W-

DATE: NOV. 5, 2015

APPEAL OF NEWARK FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Jamaica, 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. The matter is now before us on appeal. The appeal will be sustained.

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

On appeal, the Applicant submits a brief and affidavits in support. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act states:

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.

In finding the Applicant inadmissible under section 212(a)(6)(C) of the Act for fraud and misrepresentation, the Director stated that the Applicant misrepresented his marital status and his intentions with respect to his nonimmigrant visa.

(b)(6)

Matter of K-D-W-

The principal elements of a misrepresentation that renders a foreign national 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 *Kungys v. United States*, 485 U.S. 759 (1988). The Supreme Court stated that 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.

On appeal, the Applicant indicates that he was separated from his spouse at the time he made his visa application and marked that he was single on the visa application because he considered himself to be single. He contends that even if he stated that his marital status was single rather than married his misrepresentation was not material to the issuance of his visa. The record does not establish that presenting herself as being single shut off a line of inquiry in terms of his ties to Jamaica. The Applicant, as a single person, would have still been required to demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations to Jamaica, to indicate a strong inducement to return to his country of origin.

Nevertheless, the Applicant remains inadmissible under section 212(a)(6)(C) of the Act based on his misrepresentation regarding his intentions when he applied for a nonimmigrant visa and procured entry with said visa. The record indicates that the Applicant's employer filed a petition to have its dance group, which included the Applicant, come to the United States to perform in [REDACTED]. In his visa application to the U.S. Department of State in [REDACTED] Jamaica, the Applicant stated that his intentions in coming to the United States were to perform with his dance group. However, in his sworn statement on December 10, 2014, signed by the Applicant under penalty of perjury, the Applicant admitted that the purpose of coming to the United States was to visit his family. Here, the Applicant's intentions in entering the United States were relevant to his eligibility for a nonimmigrant visa and had it been known that his intentions were to visit family it may have resulted in a determination that the visa should not be issued to him. The Applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for 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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the Applicant or his U.S. citizen 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 U.S. Citizenship and Immigration Services then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 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 of Immigration Appeals (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 United States 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 *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 (Reg’l 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

(b)(6)

Matter of K-D-W-

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 (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.

The Applicant's spouse asserts that she will experience extreme hardship were she to remain in the United States while her spouse relocates abroad as a result of his inadmissibility. She states that she works part-time as a nursing assistant and needs the Applicant to financially contribute to their household and take care of their three children while she is at work. She maintains that she would have the full burden of supporting her family without his support. She further asserts that she and the children have a close relationship with the Applicant and would be devastated without him. Finally, the Applicant's spouse contends she would not be able to pursue her dream of becoming a nurse if her husband is not present in the United States.

The Applicant has submitted evidence which establishes that his spouse is employed as a certified nursing aide but her work is part-time so that she can care for the children. In 2013, tax documentation in the record establishes that the Applicant's spouse earned less than \$10,000. The couple's children are now [REDACTED] years old. If the Applicant's spouse remained in the United States without him, the record establishes that she would have the dual role of sole caretaker of three young children and primary breadwinner of her family and such an arrangement would cause her hardship. The record further indicates that she would not be able to afford childcare while she was at work based on her income. Based on a totality of the circumstances, the record establishes that the Applicant's spouse will experience extreme hardship were she to remain in the United States while the Applicant relocates to Jamaica.

Regarding relocation to Jamaica with the Applicant as a result of his inadmissibility, the Applicant's spouse asserts that her first child is from a prior relationship and her child's biological father would be against her relocation. She maintains that she cannot leave the country without her daughter. The record includes financial documentation which indicates that the Applicant's spouse's daughter from a prior relationship has been declared as a dependent on the Applicant's spouse's tax returns. If the Applicant's spouse were to relocate abroad and separate from her young daughter, she would suffer considerable emotional hardship. Further, we note that the U.S. Department of States references that crime, including violent crime, is a serious problem in Jamaica. Accordingly, 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 to Jamaica as a result of his inadmissibility.

The Applicant has established that the bar to his admission would result in extreme hardship to his qualifying relative spouse. We now address whether the Applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of 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 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).

See Matter of Mendez, 21 I&N Dec. 296, 301 (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.

The favorable factors in this matter are the Applicant's U.S. citizen spouse and children, the emotional and financial hardships his spouse and children will experience as a result of his inadmissibility, the approved I-130, Petition for Alien Relative, filed on his behalf by his spouse, and the Applicant's apparent lack of a criminal record. The unfavorable factors in this matter are the Applicant's fraud or misrepresentation as detailed above and periods of unlawful presence and employment while in the United States. In this case, when the favorable factors are considered together, they outweigh the adverse factor such that a favorable exercise of discretion is warranted. In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, 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 K-D-W-*, ID# 14172 (AAO Nov. 5, 2015)