U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-J-F-

DATE: NOV. 20, 2015

APPEAL OF WASHINGTON, DC FIELD OFFICE DECISION

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

The Applicant, a native and citizen of China, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Director of the Washington, D.C. 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 procuring a nonimmigrant visa and admission into the United States by fraud or the willful misrepresentation of a material fact. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on her behalf by her U.S. citizen spouse.

In a decision dated February 24, 2015, the Director determined that the Applicant did not establish that her U.S. citizen spouse would experience extreme hardship if the Applicant were denied admission into the United States. The Form I-601 was denied accordingly.

On appeal, the Applicant asserts that the evidence in the record demonstrates that her spouse will experience emotional, physical, and financial hardship if she is denied admission into the country and he remains in the United States or relocates with her to China. She indicates that the evidence also demonstrates that she merits a favorable exercise of discretion. The record includes, but is not limited to, an appeal brief; declarations from the Applicant, her spouse, family and friends; psychological evaluations and medical evidence; financial documentation; and country conditions information about China. The Applicant also submits documents establishing relationships and identity and family photographs. The entire record was reviewed and considered in arriving at a decision on the appeal.

In addition, the Applicant cites to our non-precedent decisions to support the assertion that her spouse will suffer extreme hardship if she is denied admission into the country. We note that while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. We note further that each application filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.2. In making a determination of statutory eligibility, we are limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

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.

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.

The record reflects that the Applicant misrepresented her marital status on her July 2013 nonimmigrant visa application and that she entered the United States with the nonimmigrant visa on September 20, 2013. The Applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa and admission into the country by fraud or willful misrepresentation of a material fact. The Applicant does not contest her inadmissibility under section 212(a)(6)(C)(i) of the Act.

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. Here, the record establishes that the Applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the Applicant 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).

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 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. INS*, 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.

With regard to hardship upon separation, the Applicant's spouse asserts in declarations that he is elderly (born 1945), has been alone many years, and has found love with the

Applicant. He states that he would be emotionally devastated if the Applicant did not remain with him in the United States. He states further that his health has deteriorated in the last year and he discusses several medical ailments and a history of alcoholism in the past. The Applicant's spouse states that he is on medication and requires regular monitoring for his health conditions. He also states that he has sought emergency treatment three times over the last year for shortness of breath. He indicates that the Applicant cares for him and assists with his medications and doctor appointments, and that her income also helps to supplement their household income.

The Applicant states, in declarations, that her spouse has heart, breathing and other medical problems, and that his children do not live near him and would be unable to care for him if she returned to China. The Applicant's spouse's daughter states further that her father has a history of heart-related health problems and is in poor health. She states that the Applicant shows her father unconditional love and that she also makes her father healthy meals and helps manage his medical appointments. She adds that she does not believe her father could survive losing the Applicant at this stage in his life. Friends state in letters that the Applicant's spouse is positive and hopeful since his marriage to the Applicant, that he would become anxious and depressed if he were separated from her, and that his health would suffer.

The record contains two psychological evaluations by a licensed clinical psychologist reflecting that the Applicant's spouse exhibited symptoms of anxiety and depression due to the Applicant's possible return to China. The psychologist diagnosed the Applicant's spouse with Major Depressive Episode, and expressed concern that the prospect of being separated from the Applicant, combined with the Applicant's spouse's fragile physical condition and vulnerability toward stress, would cause a significant deterioration of the Applicant's spouse's psychological and physical functioning.

Evidence of the Applicant's spouse's membership in Alcoholics Anonymous since 1995 is contained in the record. In addition, medical evidence reflects that the Applicant's spouse's conditions include a history of coronary artery disease, hernia, chronic atrial fibrillation, congestive heart failure, and past open heart surgery. The medical evidence reflects that the Applicant's spouse has limited functional capacity and that he needs routine follow up care every three to six months. The evidence also reflects that the Applicant's spouse requires someone at home to manage his medical condition and limited functional capacity. Evidence that the Applicant's spouse sought emergency health treatment in 2014 and 2015 is also contained in the record, as are general medical articles about the Applicant's spouse's various medical and psychological conditions.[1]

Upon review, the record reflects that the Applicant's spouse suffers from serious medical conditions and that the Applicant assists in management and support of his conditions. The evidence also reflects that the Applicant's spouse has significant psychological issues, and that his psychological

[1] The record also contains 2013 federal income tax return evidence, bank account statements, life insurance policy information, and a list of the couple's expense; however, this evidence does not demonstrate that the Applicant contributes financially to the household or that her spouse relies on her financially.

and physical conditions would deteriorate upon separation from the Applicant. Considered in the aggregate, the Applicant has demonstrated that the cumulative effect of the hardships that her spouse would experience if he remained in the United States rise to the level of extreme hardship.

The Applicant also established that her spouse would experience hardship beyond that normally experienced upon inadmissibility of a family member if he relocated to China. The psychologist states in the psychological evaluations that the prospect of relocating with the Applicant, combined with his fragile physical condition, would cause a significant deterioration of the Applicant's spouse's psychological functioning. In addition, letters from the Applicant's spouse's doctors express concern that relocation would limit the Applicant's spouse's care with his physicians, and that he would be unable to manage his medical conditions if he relocated to China.

The record contains country conditions evidence including information on the high cost of medicine in China and the poor air quality in the country. Further, the Applicant and her spouse indicate in declarations that the Applicant's spouse would have no medical insurance in China and that medical care is limited and would be unavailable if the Applicant's spouse were unable to pay for it. They also indicate that the Applicant's spouse does not speak the language or know the culture in China, and that he would be unable to work in China due to his age and because he is from the United States. In addition, the Applicant's spouse states that his children and grandchildren, with whom he is close, are in the United States, that they could not afford to travel to China, and that it would be difficult for him to travel to see them.

Upon review, the cumulative evidence demonstrates that the Applicant's spouse would lose health care coverage and ongoing medical care he receives for his health conditions in the United States, and that his physical and psychological health would deteriorate if he relocated to China. The evidence also reflects that the Applicant's spouse has never lived outside of the United States, has no family or ties in China, is unfamiliar with the language and culture, and would be separated from his family if he relocated. Taken together, the evidence in the record is sufficient to establish that the Applicant's spouse would suffer extreme hardship if he relocated with the Applicant to China.

Considered in the aggregate, the Applicant has established that her spouse would face extreme hardship if her waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

We note that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross

application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the Board, assessing the exercise of discretion under section 212(h) of the Act, stated:

> We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra,* is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the Board stated that:

> The factors adverse to the applicant 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 an 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 the alien began his 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 and service to 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 (citation omitted).

The Board further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The unfavorable factors in this case are the Applicant's procurement of a nonimmigrant visa and admission into the United States through willful misrepresentation of a material fact, unauthorized employment, and unauthorized period of stay. The favorable factors are the extreme hardship that the Applicant's U.S. citizen spouse would face if the Applicant is denied admission into the country, the Applicant's good moral character as evidenced by letters of support, the Applicant's remorse for her immigration violations, and the Applicant's lack of a criminal record. Upon review, we find that the positive factors in this case outweigh the negative 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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of L-J-F-*, ID# 14148 (AAO Nov. 20, 2015)