U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-B-J-C-

DATE: OCT. 20, 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 Haiti, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (INA, or the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Newark 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 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 attempting to procure admission to 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.

The Director found that the Applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility, and the application was denied accordingly. *See Decision of the Field Office Director* dated May 19, 2014.

On appeal the Applicant asserts that she has sufficient evidence to establish extreme hardship to her qualifying relative. With the appeal the Applicant submits a statement. 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 December 14, 2002, the Applicant attempted to enter the United States using a fraudulent, photo-substituted Haitian passport and Form I-551, Alien Registration Receipt Card in the name of another person.[1] Based on this information the Director determined the Applicant was inadmissible under section 212(a)(6)(C) of the Act for fraud or 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 spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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 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

[1] The record reflects that the Applicant was given a credible fear interview and referred to an immigration judge, who denied her application for asylum and withholding of removal and issued an order of removal on [redacted] 2005.

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. *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.

On appeal the Applicant asserts that separating her family would cause extreme suffering for her spouse in raising their U.S. citizen children alone. In an affidavit dated June 3, 2014, the Applicant's spouse states that he would experience extreme psychological and emotional hardship without the Applicant and that the children need a mother and father together.

The Applicant also asserts that her spouse would experience financial hardship without her as she provides substantial income for the family. The spouse asserts that he would experience devastating financial hardship as the Applicant's salary is a major portion of the household income and the family requires two salaries to maintain a home. He states that both he and the Applicant work, and without the Applicant he would be unable to care for the children. He states that he could not work a second job because the children are too young to be left alone and he would be unable to provide childcare.

Financial documentation submitted to the record includes income and tax information along with a lease and a utility bill. Given the spouse's relatively low income reflected in the evidence, it is reasonable to conclude that any additional income that the Applicant provides improves the family's standard of living and that without the Applicant's financial contribution her spouse would experience financial hardship. We further note the Applicant's spouse statement concerning the emotional hardship he would experience due to separation from the Applicant and the difficulties he would have supporting the family and raising their children on his own, given the ages of the Applicant's youngest children.

Having reviewed the preceding evidence, we find that in the aggregate it establishes the Applicant's spouse would experience extreme hardship resulting from separation from the Applicant.

We also find that the record establishes that the Applicant's spouse would experience extreme hardship if he were to relocate to Haiti to reside with the Applicant. On appeal the Applicant asserts that her spouse would be unable to find employment in Haiti. She further asserts that Temporary Protected Status for Haitian nationals due to disaster has been renewed, substantiating that conditions in Haiti have not improved. The Applicant's spouse asserts that living conditions in Haiti are horrible, education is terrible, and the quality of healthcare is poor, and the country has never recovered from the 2010 earthquake. He asserts that he could find no job in Haiti and that the children would have a terrible time adjusting as they have never been there.

The U.S. Department of State alerts U.S. citizens to the upcoming elections scheduled for 2015 and advises caution throughout the electoral period. *U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Haiti*, dated August 7, 2015. The State Department states that many areas are off-limits to embassy staff due to criminal activity, and demonstrations are common and can become violent. The State Department further states kidnappings, death threats, murders, armed robberies, home break-ins and car-jacking are common; medical facilities including ambulance services are scarce and sub-standard; and outside of the capital the level of community sanitation is extremely low. *U.S. Department of State, Bureau of Consular Affairs – Haiti*, dated November 24, 2014.

Furthermore, the Department of Homeland Security (DHS) Secretary determined that Temporary Protected Status (TPS) for certain Haitians was warranted because of the earthquake and aftershocks of January 12, 2010, and extended this designation through January 22, 2016. Given the unsafe living conditions, damaged infrastructure, and the shortage of permanent shelter, the Secretary determined it is unsafe for Haitians currently in the United States with TPS to return to Haiti. *See* Notice of Extension of the Designation of Haiti for Temporary Protected Status, 79 Fed. Reg. 11810 (March 3, 2014). We note that the applicant was granted Temporary Protected Status on May 27, 2010.

The record reflects that the Applicant's spouse became a U.S. citizen in 2012, having been a lawful permanent resident since 2001. As such, the record reflects that the cumulative effect of the spouse's family ties to the United States, his length of residence, safety concerns, and loss of

employment were he to relocate, in addition to current conditions in Haiti, would rise to the level of extreme hardship if he were to relocate to Haiti.

A review of the documentation in the record, when considered in its totality, reflects that the Applicant has established that her U.S. citizen spouse would suffer extreme hardship were the Applicant unable to reside in the United States.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 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.

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

The BIA 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 relief must bring forward to establish that he or she 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 favorable factors in this matter are the hardships that the Applicant's U.S. citizen spouse and children would face if the Applicant is not granted this waiver, her gainful employment and payment of taxes, the passage of more than 12 years since her immigration violation, and her apparent lack of a criminal record. The unfavorable factor is the Applicant's attempt to enter the United States by fraud or misrepresentation in 2002.

Although the Applicant's immigration violation is serious, the record establishes that the positive factors in this case outweigh the negative factors and 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 appeal is sustained.

Cite as *Matter of R-B-J-C-*, ID# 13014 (AAO Oct. 20, 2015)