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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-G-E-

DATE: OCT. 28, 2015

APPEAL OF HARTFORD 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 (INA, or the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Hartford, Connecticut, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Director found that the Applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601 accordingly.

On appeal, the Applicant asserts that his spouse would experience extreme hardship if his waiver application is denied. In support of the appeal, the Applicant submits medical and mental health records pertaining to his spouse. The Applicant also maintains that his son was born on or about The entire record was reviewed and considered in arriving at a decision on appeal.

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 procured entry to the United States on multiple occasions, most recently in December 2003, with a fraudulent passport. The Applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for procuring admission to the United States by willful misrepresentation of a material fact. The Applicant does not contest his inadmissibility on appeal.

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 or his child 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 (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 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) 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.

The Applicant does not address hardship to his spouse upon relocation to Jamaica. As such, the Applicant has not established that his spouse would experience extreme hardship were she to relocate to Jamaica, her native country, to reside with the Applicant.

Addressing the hardships that the Applicant's spouse would experience upon remaining in the United States without the Applicant, the Applicant maintains that his spouse would experience extreme hardship were he to relocate abroad as she is unable to perform any job duties due to debilitating conditions caused by her pregnancy; she was admitted to the hospital on March 23, 2015 due to high blood pressure; and she is currently hospitalized. The record includes a letter from a psychiatrist, dated February 25, 2015, who states that the Applicant's spouse complained of feeling depressed, anxious, and worried about her present situation; she is on short-term disability due to severe nausea and vomiting; she has no income; she is worried that she will have to deliver her child without the Applicant; she has no history of psychiatric illness; and her diagnosis is Mood Disorder not Otherwise Specified. The Applicant's spouse's medical records reflect that she was unable to perform any job duties between December 12, 2014 through six weeks post-partum and she had debilitating nausea and occasional vomiting while pregnant. In a supplemental letter to this office, the Applicant states that his spouse delivered a child on or about and hardship to the child should be considered. In regard to financial hardship, the Applicant contends that he has a background in construction and he needs lawful permanent residence to support his spouse.

With respect to the emotional hardship referenced, while we acknowledge the contentions in the record that the Applicant's spouse will experience emotional hardship were she to remain in the United States while the Applicant relocates abroad, the record does not establish the severity of this hardship or the effects on her daily life. As for the medical hardship referenced, we note that the Applicant maintains that their child was born in The Applicant has not submitted any

medical documentation to establish his spouse's current medical conditions, if any, and what hardships she will experience were her spouse specifically to relocate abroad. Nor has the Applicant submitted any financial documentation on appeal to establish that without the Applicant's daily presence, his spouse will experience financial hardship. Alternatively, it has not been established that the Applicant is unable to obtain gainful employment abroad and assist his spouse should the need arise. 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)). The Applicant has thus not established that his spouse would experience extreme hardship were she to remain in the United States while he relocates abroad as a result of his inadmissibility.

The record, reviewed in its entirety, does not support a finding that the Applicant's 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 appeal is dismissed.

Cite as *Matter of M-G-E-*, ID# 13849 (AAO Oct. 28, 2015)