U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-E-R-

DATE: SEPT. 17, 2015

APPEAL OF NEW YORK, NEW YORK DISTRICT OFFICE DECISION

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

The Applicant, a native and citizen of the Dominican Republic, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The District Director, New York, New York, denied the application. We dismissed an appeal of the Director's decision. The matter is now before us on motion. The motion will be denied.

The Applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure an immigration benefit under the Act through fraud or misrepresentation. The Applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to remain in the United States with his U.S. citizen wife and child.

In a July 1, 2014, decision, the District Director concluded that the Applicant did not establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.[1]

In a November 4, 2014, decision on appeal, we concurred with the Director that the Applicant did not demonstrate that that extreme hardship would be imposed on a qualifying relative, and consequently, the appeal was dismissed.

On motion, the Applicant submits an updated clinical assessment by a licensed mental health counselor and certified clinical psychopathologist, as further evidence that his spouse will suffer emotional hardship if the waiver application is not approved, as well as a document titled "International Research Findings and Notes on Fatherhood."[2]

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[1] The decision of the District Director indicates that the applicant is inadmissible under section 212(a)(2)(A)(i) of the Act and that he filed the Form I-601 pursuant to section 212(h) of the Act. As the applicant was found to have sought to procure an immigration benefit through fraud or misrepresentation, the applicable ground of inadmissibility is section 212(a)(6)(C)(i) of the Act, and the applicant seeks a waiver under section 212(i) of the Act.

[2] In a letter dated December 3, 2014, which was submitted with the Applicant's Form I-290B, Notice of Appeal or Motion, counsel for the Applicant stated that additional evidence addressing the evidentiary issues raised in our previous

The record includes, but is not limited to, the following documentation: the documents listed above, statements from the Applicant and the Applicant's spouse two psychological assessments by a licensed mental health counselor and certified clinical psychopathologist for the Applicant's spouse, a hardship letter by a licensed clinical social worker for the Applicant's spouse, financial documentation, medical and school documents for the Applicant's son, documentation of birth, marriage, and citizenship, photographs, and country-conditions information on the Dominican Republic. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record indicates that the Applicant entered the United States without inspection in August 2001. The Applicant applied for adjustment of status based upon a Form I-130, Petition for Alien Relative (Form I-130) filed by the Applicant's spouse. On his Form I-485, Application to Adjust Status, and during the Applicant's adjustment of status interview on May 22, 2012, he presented a fraudulent visa and a fraudulent Form I-94 Arrival / Departure Record which indicated that the Applicant was inspected and admitted to the United States on May 22, 2001. The Applicant admitted that the visa and Form I-94 were false. The Applicant does not contest his inadmissibility.[3] We therefore affirm that the Applicant is inadmissible under section 212(a)(6)(C) of the Act. The Applicant's qualifying relative for a waiver of this inadmissibility is his U.S. citizen spouse.

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204

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decision would be submitted within 30 days. However, as we have not received any additional evidence, the record is considered complete.

[3] Section 245 of the Act provides that a person who was not inspected and admitted or paroled is not able to adjust their status in the United States unless he/she qualifies for relief under section 245(i) of the Act. Although the applicant initially entered the United States without inspection in 2001, the record indicates that the applicant was approved for advance parole on August 22, 2013, departed the United States, and on September 30, 2013, the applicant was paroled into the United States at Airport.

> (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 U.S. citizen wife 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 a child's hardship a factor in determining 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 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. 1993), (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 contends that his spouse will suffer emotional and mental hardship if his waiver application is not approved. In our previous decision, we noted that the record includes a psychoemotional and family dynamics assessment by a licensed clinical mental health counselor and certified clinical psychopathologist based on an evaluation of the Applicant's spouse conducted between July 5, 2014 and July 12, 2014. The assessment provides a diagnostic impression that the Applicant's spouse is experiencing a comorbid anxious-depressive condition triggered by the uncertainties of her husband's pending immigration situation and has developed an adjustment disorder with mixed anxiety and depressed mood.

On motion, the Applicant submits a clinical update of that assessment dated November 26, 2014, by the same licensed clinical mental health counselor and certified clinical psychopathologist. The clinical update indicates that the Applicant's spouse decided to begin individual psychotherapy sessions on August 8, 2014, and continued with the sessions, typically on a bimonthly basis, up until at least the date of the report in November 2014. The clinical update states that the Applicant's spouse continues to show an adjustment disorder with mixed anxiety and depressed mood, and her symptoms could deteriorate further, which could lead to a major depressive disorder of unpredictable consequences. The clinical update indicates that psychological inventories administered to the Applicant's spouse continue to show that she is experiencing a comorbid anxious-depressive condition.

In our previous decision, we noted that although the Applicant's spouse will experience some financial difficulty if the waiver application is not approved, it was unclear from the evidence in the record whether the qualifying spouse would be unable to meet her financial obligations in the Applicant's absence. On motion, the Applicant did not present any additional information regarding the financial status of his spouse.

Our previous decision also examined the issue of whether the Applicant's spouse would experience hardship based on the hardships that may be experienced by the Applicant's son if the waiver application is not approved. Under section 212(i) of the Act, children are not deemed to be qualifying relatives, and a child's hardship will only be considered insofar as it affects whether a qualifying relative experiences extreme hardship. We found that the Applicant did not establish that hardships to the Applicant's son would result in extreme hardship to the Applicant's spouse.

On motion, in the clinical update of his spouse's psychological assessment, his spouse states that their son's future will be hampered if the Applicant is unable to remain in the United States, and that she is aware of the consequences of raising her child without the emotional, moral, and economic support of her husband. We recognize the concerns that the Applicant's spouse has for support and care of her son. However, we note that the Applicant has not submitted any additional documentation on his son's educational difficulties and learning disabilities to substantiate claims that the son's difficulties, and therefore the spouse's difficulties, would rise above the hardship normally experienced by children separated from a parent.

We recognize that the Applicant's spouse will endure hardship as a result of separation from the Applicant. Specifically, the record reflects the spouse will experience emotional and psychological difficulties without the Applicant present. However, the evidence in the record does not establish that the hardships the Applicant's spouse will experience, even when considered in the aggregate, rise to the level of extreme.

With respect to relocation, we previously noted that the Applicant's spouse was born in the Dominican Republic, and thus is familiar with the language and customs of that country. We further noted that the Applicant did not present evidence that he would not be able to find suitable employment outside the United States to support his family. In addition, we found no evidence in the record to support the contention that the Applicant's spouse would be unable to receive professional, education, and religious services she obtains in the United States in the Dominican Republic. The Applicant did not provide any additional evidence on motion to show that his spouse would experience extreme hardship if she were to relocate to the Dominican Republic.

Based on the evidence on the record, the Applicant has not established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to the Dominican Republic to reside with the Applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the Applicant has not established extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. As the Applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion.

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 is denied.

Cite as *Matter of J-E-R-*, ID# 14676 (AAO Sept. 17, 2015)