U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF X-H-W-

DATE: SEPT. 28, 2015

APPEAL OF NEWARK FIELD OFFICE DECISION

APPLICATION: 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 Field Office Director, Newark Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), for making a material misrepresentation to gain admission into the United States. The Applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse, who filed a Form I-130, Petition for Alien Relative, on her behalf.

The Director, in a decision dated October 28, 2014, denied the application, finding that the Applicant had not established that her spouse would suffer extreme hardship if the waiver was not granted.

On appeal, the Applicant asserts that the Director abused her discretion, because she did not fully consider the extreme hardship that the Applicant's 70 year-old husband would experience if she were not permitted to stay in the United States. The Applicant also submits new evidence of hardship with her appeal.

The record includes, but is not limited to: a brief, identity and relationship documents, a psychological evaluation, medical records, financial records, statements from the Applicant and her qualifying spouse, letters from friends, school documents, photographs, and reports on conditions in China. 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.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary 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.

In the present case, the record reflects that the Applicant misrepresented her marital status as married on her Department of State nonimmigrant visitor visa application. During her adjustment of status interview on June 5, 2014, the Applicant said that the information she provided on her visa application was false; she had never been married to the individual she named in the application; she was told visa applicants "need to have a family and a good relationship with the family to be able to leave the country"; and she understood that she was lying on her nonimmigrant visa application. Although in the Applicant's Form I-601 statement she suggests that this misrepresentation was not willful, her testimony in June 2014 supports concluding that she was aware of her actions and her misrepresentation. The Applicant is therefore inadmissible under section 212(a)(6)(C) of the Act for procuring entry into the United States through misrepresentation.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in the Applicant's case, her U.S. citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (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*, 138 F.3d at 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.

We will first address hardship to the Applicant's spouse if he relocates to China. The Applicant and her spouse state that it would be impossible for him to live in China for several reasons. They both assert he would be unable to find employment because he does not speak any Chinese languages. He also believes that as a foreigner, he would not be entitled to social or retirement benefits. Moreover, according to her spouse, all of his friends and family reside in the United States, and he has no family ties in China. He also expresses concern about being unable to practice his religion, Judaism, in China. Finally, the Applicant and her spouse raise the effect of environmental health hazards in China as another hardship factor.

With respect to the assertions that her spouse would be unable to find work in China and would be ineligible for social benefits, the Applicant provides no corroborating evidence. 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)). Moreover, although the Applicant states that she will support her spouse, she provides no information to show that in China she would not find employment or earn sufficient income to financially support him.

To support claims about hardship her spouse would experience related to environmental health hazards in China, the Applicant submits articles that conclude Chinese cities have some of the worst air pollution in the world and that expose contaminated tap water concerns; two additional articles discuss poor food safety in China. However, the Applicant has not specified where she and her spouse would reside in China and whether that area is polluted. Without this information, we are unable to conclude that her spouse would experience medical or emotional hardship related to living with pollution at levels that could adversely affect his health.

The Applicant's spouse states that he would be unable to practice his religion in China. The Applicant submits a Department of State International Religious Freedom Report that indicates that Judaism is not included as one of the five state-sanctioned religions in China. The record, however, lacks evidence showing that her spouse actively practices his religion or attends religious services in the United States. The Applicant's spouse also asserts that he is unsure he could live in a country that is ruled by a Communist party, because he disagrees with their political tenets. The Applicant has not shown, however, how her spouse would experience hardship related to his political views. Although she asserts that his religious and political views will make her spouse a target of discrimination and persecution, she does not establish how her spouse's views would become evident, were he to relocate to China.

It is reasonable to conclude that the Applicant's spouse would experience a degree of hardship if he were to relocate to China, given his age and his lack of familiarity with the culture and languages there. The record, however, lacks corroborative evidence showing that the Applicant's spouse would experience financial hardship due to a lack of employment opportunities. Moreover, the extent of emotional hardship he would experience is unclear, given evidence showing that her spouse lacks strong family ties in the United States. The record, therefore, includes insufficient documentary evidence of emotional, financial, or other types of hardship that, considered in the aggregate, establishes that the Applicant's spouse would suffer extreme hardship upon relocation to China.

We will now address hardship to the Applicant's spouse if he remains in the United States. The Applicant's spouse states that he cannot live without her love and care. He says that the Applicant has become a key part of his life. He further states that he is not close to his adult daughters, so he has come to rely upon the Applicant for emotional support.

According to a psychological evaluation in the record, after an interview in November 2014, a psychologist concluded that the Applicant's spouse developed symptoms of severe depression and anxiety as a result of his fear of losing the Applicant. The psychologist notes that the Applicant's spouse's symptoms include sleep disturbance, poor appetite, difficulty concentrating, persistent sadness, chronic anxiety, and reduced sexual libido. He further notes that the Applicant's spouse was in deep pain for almost the entirety of his first marriage after the birth of his daughters, and for all intents and purposes, the Applicant is his only family now.

With respect to assertions that her spouse would experience medical hardship if he remains in the United States without her, the Applicant submits evidence that her spouse has diabetes and a minor back problem but, according to his doctor, is basically in good health. The Applicant's spouse states that the Applicant reminds him to take his medicine and gives him massages when he has back pain.

On appeal, the Applicant asserts that because her spouse is 70 years old, he will not be able to work much longer and that he will need to rely on her for financial support. However, the Applicant does not provide evidence that her spouse plans to retire soon or that she is becoming the family's primary breadwinner. Although the Applicant's spouse states that he does not have extra income after paying his living expenses, the Applicant submits no evidence to corroborate his statement.

The record reflects that the Applicant's spouse may suffer emotional hardship due to separation from the Applicant, but the record contains insufficient evidence of financial, medical, and other types of hardship that, considered in the aggregate, establishes that her spouse would suffer more than the usual hardships resulting from removal.

The Applicant has not established extreme hardship to her 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 she 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 appeal is dismissed.

Cite as *Matter of X-H-W-,* ID# 10837 (AAO Sept. 28, 2015)