U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-F-L-

DATE: APR. 15, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Tanzania, seeks a waiver of inadmissibility for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver to self-petitioners under the Violence Against Women Act (VAWA) if refusal of admission would result in extreme hardship to the self-petitioner or to a qualifying relative or qualifying relatives.

The USCIS Field Office Director, Honolulu, Hawaii, denied the application. The Director concluded that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. The Director then determined that the Applicant did not establish that he would experience extreme hardship upon relocation to Tanzania. We dismissed an appeal because the record lacked sufficient evidence of emotional and financial hardship.

The matter is now before us on a motion to reopen and reconsider. In the motion, the Applicant submits additional evidence and claims that the Director erred in failing to consider there are other means of abuse and that Tanzania has few technology jobs.

We will deny the motion.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for fraud or willful misrepresentation, specifically for procuring a nonimmigrant visa and admission to the United States by failing to disclose his prior unauthorized status and employment in the United States.

A motion to reopen must state new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and

Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Section 212(a)(6)(C)(i) of the Act states:

> 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, 8 U.S.C. § 1182(i), provides, in pertinent part:

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 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 a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

Decades of case law have contributed to the meaning of extreme hardship. The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury." *Matter of Ngai,* 19 I&N Dec. 245, 246-47 (BIA 1984). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; *see also Matter of Shaughnessy,* 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was "no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects"). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment," are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); *but see Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

II. ANALYSIS

The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.[1] The Applicant is a self-petitioner under VAWA and has an approved Form I-360, Petition for Amerasian, Widow or Special Immigrant. The only issue presented on motion is whether refusal of admission would result in extreme hardship to the Applicant. The evidence in the record, considered individually and cumulatively, does not establish that the Applicant would experience extreme hardship if the waiver application is denied. As the Applicant has not demonstrated extreme hardship as a self-petitioner or to a qualifying relative or qualifying relatives, we need not consider whether the Applicant warrants a waiver in the exercise of discretion.

A. Waiver

The Applicant must demonstrate that denial of the application would result in extreme hardship to himself or to a qualifying relative or qualifying relatives, in this case the Applicant must demonstrate extreme hardship to himself as he has no qualifying relative. In support of his claim of hardship, the Applicant submitted the following evidence. With the Form I-601, the Applicant submitted a declaration, court documentation, police records, financial records, and documentation about domestic violence and employment in Tanzania. On appeal, the Applicant submitted financial records, employment records, and further documentation about Tanzania. On motion, the Applicant submits documentation on cyberstalking and additional documentation on employment in Tanzania.

In our prior decision, we stated that the record reflected that the Applicant experienced domestic violence by his former spouse in the United States but that the record did not have sufficient evidence to support the Applicant's concern that if he were to relocate to Tanzania his former spouse would move to Tanzania or travel there with the intention to abuse him. We further stated that the record lacked sufficient evidence of financial hardship.

On motion, the Applicant claims that his former spouse would not need to follow him to Tanzania to abuse him because, regardless of their geographic distance, she would be able to use the Internet and networking sites to stalk him, spread rumors about him, or encourage others to harm him. The Applicant contends that there are limited resources in Tanzania to help cyberstalking victims and that even if remedies become more available, his ability to use those remedies would be extremely limited because his former spouse could not be prosecuted in Tanzania. In support of his assertion, the Applicant submitted a journal article about technology and stalking. An applicant must demonstrate that claimed hardship is realistic and foreseeable. *See Matter of Ngai* and *Matter of Shaughnessy, supra.* As the record indicates that his former spouse has had no contact with him

[1] The record establishes that the Applicant stated at his adjustment of status interview on January 4, 2011, that he did not disclose his prior unauthorized status and employment in the United States on his nonimmigrant visa application at the U.S. embassy in Tanzania, and that on his Form G-325A, Biographic Information, he misrepresented where he lived and worked.

since their divorce in 2012, we find that the Applicant's concern that she will use the Internet and networking sites to harass and abuse him is not realistic and foreseeable.

The Applicant also states that he is gainfully employed as a development lead at an airlines and it would be very difficult for him to obtain comparable employment in the information and communication industry in Tanzania. The Applicant asserts that he is also in the process of reducing his credit card debt, which he could not do if he relocates to Tanzania. In support of the claimed hardship, the Applicant provided submitted a Formal Sector Employment and Earnings Analytical Report from the Tanzanian Ministry of Finance. This report indicates that within the information and communication industry, less than 2 percent of employees are over the age of 25, and that there were 221 information and communication unfilled vacancies. The report also indicates that salaries for employees in the industry are about $337 a month. The Applicant also submitted evidence of his credit card and loan statements establishing that he owes about $17,000. Although the Tanzanian Ministry of Finance report indicates that it may be difficult for the Applicant to obtain gainful employment in the technology field, hardships such as economic detriment, loss of current employment, and the inability to pursue a chosen profession and maintain one's living standard are common consequences of removal or refusal of admission. *See Matter of Pilch, supra.* Nevertheless, we have considered these claims in our evaluation of the aggregate hardship.

Here, the Applicant has not demonstrated that his concerns about his former spouse are realistic and foreseeable. Nor has he demonstrated that his hardships of economic detriment and loss of current employment and his inability to pursue his chosen profession and maintain his living standard are more than the common consequences of removal or refusal of admission. Thus, in this case, the evidence in the record, considered both individually and cumulatively, does not establish that the Applicant would experience extreme hardship upon relocation to Tanzania.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we deny the motion.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-F-L-*, ID# 15863 (AAO Apr. 15, 2016)