U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-C-P-

DATE: AUG. 30, 2016

APPEAL OF PHILADELPHIA, PENNSYLVANIA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of India, seeks a waiver of inadmissibility for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) § 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 that of a lawful permanent resident must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The USCIS Director, Philadelphia, Pennsylvania Field Office, denied the application. The Director concluded that the evidence was insufficient to establish that denial of the application would cause extreme hardship to a qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and a brief. He asserts that the Director erred in not considering the effect of the Applicant's child's hardship upon the Applicant's spouse. He also provides new evidence concerning his spouse's medical conditions and health care availability in India.

Upon *de novo* review, we will dismiss the appeal. The evidence, including the additional evidence submitted on appeal, does not establish that the Applicant's spouse would experience extreme hardship.

I. LAW

The Applicant is seeking to adjust status to that of a lawful permanent resident and has been found inadmissible for fraud or misrepresentation, specifically for presenting a passport belonging to a British citizen to gain admission into the United States under the visa waiver program.

Section 212(a)(6)(C)(i) of the Act renders inadmissible any foreign national 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 the Act.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national.

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 only issue to be addressed on appeal is whether the Applicant's qualifying relative, his U.S. citizen spouse, would experience extreme hardship if the waiver application is denied. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.[1]

The Applicant asserts that his spouse, a native of India, would experience extreme hardship if the waiver is denied, whether she remains in the United States without him or accompanies him to India. The evidence in the record, considered in the aggregate, does not establish that the Applicant's spouse would experience extreme hardship if his application is denied. Because the Applicant has not established extreme hardship to a qualifying relative, we will not address whether the Applicant merits a waiver as a matter of discretion.

[1] Based on evidence in the record, the Director found that the Applicant was admitted into the United States under the visa waiver program in 2005 by presenting a photo-substituted passport.

A. Hardship

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case, the Applicant's U.S. citizen spouse. The Applicant does not indicate whether his spouse intends to remain in the United States or relocate with him should he depart or be removed from the United States, but the Applicant claims his spouse would experience extreme hardship under either scenario.

In support of the claim of hardship to his spouse, the Applicant submitted the following evidence with the Form I-601: the Applicant's declaration, financial records, a psychological report about the Applicant's spouse, photographs, and letters describing his work ethic and community service. On appeal, the Applicant submits a brief, a medical abstract, an article about India's health care system, and medical records for his spouse.

The Applicant claims that if he is separated from his family, they will be affected emotionally, medically, physically, and financially. As to emotional hardship, the Applicant stated that his spouse is dependent upon him and that their daughter is very attached to him. He also stated that his removal would result in a "gap" in child-care responsibilities, which would cause their daughter extreme hardship, given their relationship and his spouse's emotional condition.

On appeal, the Applicant asserts that the Director erred by not considering how the Applicant's spouse would suffer due to their child's hardship. Congress did not include hardship to a foreign national's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the Applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the Applicant's child will not be separately considered, except as it may affect the Applicant's spouse.

The Applicant also stated that his spouse suffers from depression and anxiety and has suffered from mood disorders since her childhood. He further stated that she has debilitating headaches, low self-esteem, difficulty sleeping, and feelings of hopelessness. He asserted that she has been confused, restless, cries easily, and demonstrated compulsive behavior that affects their child.

The Applicant submitted a psychological evaluation of his spouse to corroborate his claims of her emotional hardship. The psychologist reported that the Applicant's spouse has suffered from depression since childhood, and she stated that she was sad and would withdraw from her family and friends. The Applicant's spouse informed the psychologist that she continues to isolate herself and is dependent upon the Applicant. The psychologist stated that the Applicant's spouse had suicidal thoughts when her first marriage began to break down but that her depression has improved. He clarified that the improvement is "precarious," because she still sometimes has suicidal thoughts and is nervous and anxious. The psychologist stated that the Applicant is his spouse's sole confidante, and the Applicant's spouse would be lost without him in the context of their culture, because she depends on him financially, socially, and to make decisions. The psychologist concluded that the Applicant's underlying depression would be exacerbated by separation from the Applicant. The

psychologist also stated that the Applicant and his spouse share child-care responsibilities for their young daughter and that if the Applicant and his spouse were separated, his spouse would have difficulty caring for their year-old daughter alone.

On appeal, the Applicant asserts that the Director erred by giving limited evidentiary value to the psychological evaluation. The Director concluded that the report appeared limited in scope because the psychologist's diagnosis was based on five meetings of undisclosed length with the Applicant's spouse. She further stated that the report did not present a treatment plan or indicate that the Applicant's spouse had ever sought treatment for depression. She concluded that the report was factually inconsistent with other evidence in the record. The Applicant takes issue with the Director's decision, asserting that the Director did not identify the factual inaccuracies.

The Director listed several inconsistencies in the evidence, concerning whether the Applicant's spouse was entirely dependent upon the Applicant for emotional and financial support and whether she had poor English-speaking skills. The Director concluded from the photographs and letters in the record that the Applicant's spouse would have a strong support group in the United States without the Applicant. She quoted the psychologist as saying that the Applicant's spouse had very limited English skills, and she would be lost without the Applicant to make decisions. The Director stated that the record showed that the Applicant's spouse had held a responsible job managing a store and that she had demonstrated her English skills when she passed the language test to become a U.S. citizen. The Director correctly noted an inconsistency about whether the Applicant is the sole source of the family's financial support. However, the Applicant's spouse may have a support system in the United States and still experience emotional hardship related to her dependence on the Applicant. In addition, passing the language test to qualify for U.S. citizenship would not necessarily establish her English proficiency. The Director correctly found a relevant inconsistency between the psychologist's report, which indicates that the Applicant's spouse is entirely dependent upon the Applicant financially, and the lack of other evidence showing the Applicant's financial contributions to his spouse.

Regarding medical hardship, the Applicant submits a physician's report indicating that his spouse suffers from depression and a seizure disorder that may be controlled by regular medication and routine medical follow up. The physician states that the Applicant's spouse has been taking a mood-stabilizing medicine to treat her depression, which also functions as an anti-seizure medication. He further states that depression may be successfully treated, but the risk of recurrence is fairly common and her prognosis is guarded.

As to physical hardship, the Applicant asserted that his spouse has "experienced falls and fractures in the past secondary to confusion and restlessness." The Applicant does not provide corroborating evidence of his spouse's injuries, although the psychologist indicated that the Applicant's spouse fell out of bed, broke her arm, and had surgery as a result. The Applicant does not assert that his spouse's injuries have caused or will continue to cause her hardship.

Concerning the financial hardship his spouse would experience if his waiver application were denied, the Applicant submitted a 2014 employment verification letter, stating that the Applicant's spouse holds a permanent position as a store manager and earns an annual salary of $40,000. The Applicant submits income tax returns showing his spouse earned $16,300 in 2011 and $11,000 in 2012 and that she received unemployment compensation in 2012 in the amount of $4,400. The psychologist reported that the Applicant was the family's sole financial provider, but the Applicant provides no evidence of his income or of his financial support for his spouse and their daughter. Simply 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 (Reg'l Comm'r 1998). *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Reviewing the Applicant's evidence of hardship upon separation, individually and in the aggregate, we find that the Applicant has not established that his spouse would suffer extreme hardship. The evidence of emotional hardship, consisting of the Applicant's statements, a psychological evaluation, and a medical report, reflects that the Applicant's spouse's emotional and psychological hardship would be significant, but it is only one factor to consider. Though the Applicant asserts his spouse would experience financial hardship, he submitted minimal evidence that does not reflect his contributions or the family's expenses. As noted above, the record lacks corroborative evidence to show that the Applicant financially supports his family. In addition, the evidence is unclear concerning whether the Applicant's spouse works full- or part-time. Although the Applicant's spouse's emotional and psychological response to the prospect of being separated from him is understandable and relevant to evaluating her hardship, the record lacks documentation that supports the contention that this hardship alone rises to the level of extreme hardship. The record does not contain sufficient evidence to establish the emotional, psychological, financial, or other impacts of separation on the Applicant's spouse, considered cumulatively, are beyond the hardships commonly experienced upon separation. The Applicant has not established that his spouse would experience extreme hardship if she remained in the United States in the event he is removed.

The Applicant claims that if his spouse relocates with him to India, she will experience hardship medically, physically, emotionally, and financially. The Applicant asserts that his spouse needs ongoing medical care and that if she relocates to India, she will suffer because of a lack of access to medical care there. He submits a doctor's report on appeal, indicating that medical care in India is intermittent and marginal. The doctor further states that medical care in India is very expensive. In support of his assertions, the Applicant submits an abstract of an article addressing healthcare in India, which states that India's health system is facing an ongoing challenge of responding to the needs of its most disadvantaged members of society. The Applicant also submits medical records from India, prepared by physicians who had treated his spouse in 2006 and 2007, several years before they married. The Applicant has not shown that he and his spouse are disadvantaged and would lack access to suitable health care, nor has he asserted or shown that the care she received in India in the past was ineffective.

With respect to his spouse's emotional hardship, the Applicant expresses concern about helping their daughter achieve the American dream if they were to reside in India. As stated above, we recognize that the Applicant's spouse could experience hardship as the result of their child's hardship. The record lacks evidence to corroborate claims, however, that their daughter's adjustment to life in India would be so difficult as to cause his spouse emotional hardship. The Applicant does not assert that his spouse would suffer any other type of emotional hardship upon relocation to India.

Raising concerns of financial hardship to his spouse if she relocated with him, the Applicant states that he has limited resources to start a new business or find employment in India. He indicates that he has lost contact with friends in India and that his parents are unable to help him financially. The Applicant submitted a psychological report, however, which shows that his spouse told the psychologist that she obtained a degree in microbiology in India and also worked in India. The Applicant does not address his spouse's employment prospects in India. He has not provided sufficient information that would permit accurately assessing the extent of financial hardship, if any, were he to relocate with his spouse and their child to India.

The record does not establish that the hardships demonstrated rise to the level of extreme hardship when considered both individually and cumulatively, because the record does not provide sufficient evidence to establish that the emotional, financial, physical, or medical impacts of relocation are cumulatively above and beyond the hardships normally experienced in these circumstances. As the Applicant has not demonstrated extreme hardship to a qualifying relative, we need not consider whether he warrants a waiver in the exercise of discretion.

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. The record does not establish that the Applicant's spouse would experience extreme hardship if the application is denied.

ORDER: The appeal is dismissed.

Cite as *Matter of H-C-P-*, ID# 17115 (AAO Aug. 30, 2016)