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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-F-C-

DATE: FEB. 12, 2016

APPEAL OF COLUMBUS FIELD OFFICE DECISION

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

The Applicant, a native of China and citizen of Guyana, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Columbus, Ohio, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse and daughter, born in

In a decision dated May 8, 2015, the Director found that the Applicant had not demonstrated extreme hardship to a qualifying relative. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

In support of the instant appeal, the Applicant submits an affidavit from her spouse, financial documentation, medical documentation for her spouse, a psychological evaluation of her spouse, school records for her daughter, support letters, and information about country conditions in Guyana. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), provides:

> 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)(1) of the Act, 8 U.S.C. § 1182(i)(1), provides that section 212(a)(6)(C)(i) inadmissibility may be waived as a matter of discretion for

> 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 . . . that the refusal of admission . . . 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.

The record reflects that on May 31, 2003, the Applicant attempted to enter the United States by presenting a fraudulent passport. Based on this information the Applicant was found inadmissible for fraud or misrepresentation. The Applicant does not dispute the finding that she is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to enter the United States through fraud or misrepresentation.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. In this case, the qualifying relative is the Applicant's U.S. citizen spouse. 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).

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), but hardship "need not be unique to be extreme." *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996). 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); *see also Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship); *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).

In an affidavit submitted on appeal the Applicant's spouse contends that he will suffer emotional and financial hardship due to separation from the Applicant. He states that because he works a lot in a restaurant he has developed health problems for which he needs acupuncture and massages, takes eight medications, and needs the Applicant's support as a caregiver. The Applicant contends that she maintains the household since her spouse works a lot as a cook, and that it would be difficult for her spouse to be responsible for work and to care for her daughter, causing him more stress. The Applicant insists that her spouse would struggle financially as a single father and to send money to

her because she would probably have no job in Guyana and his support for her would decrease the household income that is already lower than their expenses.

Medical documentation, dated June 29, 2015, shows the Applicant's spouse as diagnosed with hepatitis with a history of bleeding peptic ulcer, hypertension, abdominal pain, chronic kidney disease, and costochondritis, and provides a list of medications. A psychological evaluation, dated May 20, 2015, diagnosed the Applicant's spouse with major depression, recurrent, severe; generalized anxiety disorder; post-traumatic stress disorder; and depressive personality disorder with dependent personality traits. The evaluation notes the spouse's past including his grandfather and father being persecuted and killed in China and his mother's loss of freedoms and resulting separation from him, and his divorce from his first wife who then would not allow him to see his son. The evaluation states that the spouse experiences poor, agitated sleep and sees dead relatives in his dreams, and that tests show him as severely depressed with low self-image. The evaluation concludes that the spouse needs mental health treatment and that the Applicant is critical to him. Letters from the spouse's siblings note the difficulties the Applicant's spouse has experienced and the Applicant's importance to him.

Regarding financial hardship, documentation submitted to the record includes income tax returns and pay statements for the Applicant and her spouse as well as medical, insurance, utility and other billing statements. The record indicates that until recently, the Applicant was gainfully employed but stopped working to help care for her spouse and child.

Based on a totality of the circumstances, we find that the record establishes that the Applicant's spouse would experience extreme hardship resulting from his separation from the Applicant. In reaching this conclusion we note the spouse's medical and emotional conditions, and his financial status.

We also find the record to establish that the Applicant's spouse would experience extreme hardship if he were to relocate to Guyana to reside with the Applicant due to her inadmissibility. The Applicant maintains that her spouse's family, including two sons from previous relationships and numerous siblings, friends, gainful employment, and social network are in the United States and that he has no ties to Guyana, so relocating there would cause depression and anxiety. She further contends that it is not known if they could find jobs in Guyana because of the economy. The Applicant submitted country information about economic conditions and high levels of crime in Guyana, and a report from the U.S. Embassy giving the country a "critical" rating for crime. According to the U.S. Department of State, serious crime, including murder and armed robbery, is a major problem in Guyana. It further indicates that medical care does not meet U.S. standards; that care is available for minor medical conditions, although quality is very inconsistent; and that emergency care and hospitalization for major medical illnesses or surgery are very limited, due to a lack of appropriately trained specialists, below standard in-hospital care, and poor sanitation.

The record reflects that the Applicant's spouse has resided in the United States since 1982, more than 30 years ago, and became a U.S. citizen in 2008. His two sons from previous relationships, and

numerous siblings, reside in the United States. He has no ties to Guyana. The record establishes that the cumulative effect of the spouse's ties to the United States, his length of residence in the United States, his safety concerns, and loss of employment were he to relocate, rises to the level of extreme. We thus conclude that the Applicant's spouse would suffer extreme hardship if he relocated abroad with the Applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the Applicant has established that her U.S. citizen spouse would suffer extreme hardship were the Applicant unable to reside in the United States. We now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 299 (BIA 1996). We must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (citations omitted). In evaluating whether to favorably exercise discretion,

> the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

Id. at 301 (citations omitted). We must also consider "[t]he underlying significance of the adverse and favorable factors." *Id.* at 302. For example, we assess the "quality" of relationships to family, and "the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed]." *Id.* (citation omitted).

The favorable factors in this case are the extreme hardship the Applicant's spouse and child would face, regardless of whether they accompany the Applicant or stay in the United States; the Applicant's payment of taxes; the Applicant's periods of gainful employment in the United States; letters of support from her spouse's family and church; her community ties; her record of donations and involvement in her church; her apparent lack of a criminal record; and the passage of more than a decade since her attempted entry to the United States by fraud or misrepresentation. The negative factors in this case are the Applicant's attempted entry to the United States through fraud or

misrepresentation as detailed above, periods of unlawful presence and employment in the United States, the Applicant's placement in removal proceedings, and her failure to depart pursuant to a voluntary departure order. In this case, when the favorable factors are considered together, they outweigh the adverse factors such that a favorable exercise of discretion is warranted.

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 met that burden. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of W-F-C-*, ID# 15144 (AAO Feb. 12, 2016)