U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Y-L-

DATE: FEB. 22, 2016

APPEAL OF SACRAMENTO FIELD OFFICE DECISION

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, Sacramento, California, 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 pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring an immigration benefit by fraud or willful misrepresentation. The Applicant seeks a waiver of inadmissibility in order to remain in the United States with her U.S. citizen spouse. On April 9, 2015, the Director determined that the Applicant had not established extreme hardship would be imposed on her U.S. citizen spouse and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the Applicant submits a brief, and a copy of an article on health care in China. In the brief, the Applicant contends that the Director erred by failing to consider all of the evidence and relevant hardship factors. The Applicant states that she provided sufficient evidence to establish extreme hardship to her spouse if she was to be removed from the United States.

The record includes, but is not limited to: the documents listed above; a declaration from the Applicant's spouse; evidence of birth, marriage, and divorce; car insurance and tax records; prescription information for the Applicant's spouse; copies of bills and bank account statements; and photographs. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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 that:

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

The record indicates that the Applicant was admitted to the United States as a nonimmigrant visitor on February 23, 2007. The record further reflects that on August 16, 2007, the Applicant filed a Form I-589, Application for Asylum and for Withholding of Removal, claiming she was still married to her first spouse, when in fact, she and her first spouse were divorced in 2000. Therein, the Applicant asserted she was persecuted based on China's one-child policy, stating that after her daughter was born in 1997, she and her husband were forced to have two abortions in 2005 and 2006. Her Form I-589 was approved on September 27, 2007. A Form I-485, Application to Register Permanent Residence or Adjust Status, was filed on February 9, 2009, wherein the Applicant claimed to be still married to her first spouse.[1] A subsequent Form I-485 was filed on February 27, 2012, based on a marriage to her current spouse. During her Form I-485 interview conducted on May 17, 2012, the Applicant admitted that she had been divorced from her first spouse since 2000. Because the Applicant had misrepresented the fact that she had been divorced from her initial spouse at the time of filing her Forms I-589, the Director determined the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act. The Applicant does not contest this finding of inadmissibility on appeal. We therefore affirm that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a benefit under the Act, namely, asylum status, through fraud or misrepresentation of a material fact, her marital status.

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 her 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

[1] We note that on October 21, 2014, the Director acknowledged the Applicant's request to withdraw the Form I-485.

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).

Regarding relocation, the Applicant's spouse, in his declaration, claims he cannot relocate to China as he does not speak Mandarin, he would not have the same level of healthcare, and does not have the working skills to start over. The Applicant's spouse states that his work, his family, and friends all reside in the United States. The Applicant asserts that her spouse has no relatives or friends in China, he does not speak the language, would not be able to find a job or maintain his health insurance, and he would be only able to remain in China on a temporary basis due to his foreign status.

The internet article regarding health insurance in China submitted on appeal, however, does not specifically indicate that the Applicant's spouse would not be able to obtain health insurance; rather it recommends that although costly, one should be adequately covered for any medical issues that may arise. Nevertheless, we find the Applicant has demonstrated that her spouse would experience extreme hardship upon relocation to China. The material submitted establishes that the Applicant's spouse was born and raised in the United States, is not familiar with any Chinese languages, and has no ties to China. Furthermore, the spouse has shown he would have to quit his employment as a computer security consultant with the state government, and he would be leaving his home, relatives, and other ties in the United States. Based on the totality of the circumstances, we find that the Applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the Applicant due to her inadmissibility.

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 unfavorable factor in this matter is the Applicant's procurement of asylum through fraud or willful misrepresentation, as discussed above. The favorable factors include the extreme hardship to the Applicant's spouse if he were to relocate to China; the lack of a criminal record on behalf of the Applicant; the Applicant's length of time residing in the United States; and the Applicant's admission of and apology for her misrepresentation. The Applicant has established that the favorable factors in her application outweigh the unfavorable factor. Therefore, 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.

ORDER: The appeal is sustained.

Cite as *Matter of Y-L-*, ID# 15092 (AAO Feb. 22, 2016)