U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-K-M-

DATE: FEB. 24, 2016

APPEAL OF LOS ANGELES FIELD OFFICE DECISION

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

The Applicant, a native of Syria and citizen of Lebanon, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Los Angeles, 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 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 his U.S. citizen spouse.

In a decision dated December 1, 2014, the Director found that the Applicant had not established that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

On appeal, the Applicant contends that the denial was an abuse of discretion as evidence regarding extreme hardship to his spouse was not considered in the aggregate. With the appeal, the Applicant submitted a brief, affidavits from his spouse and him, a psychological evaluation of his spouse, medical documentation for his spouse, and country information for Lebanon and Syria. 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(a)(6)(C)(ii) of the Act provides, in pertinent part, that:

> (I) In General- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or

benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II) Exception- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

On a prior review of the record, we found that the Applicant was inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, for making a false claim to U.S. citizenship. The record contained information indicating that the Applicant made a claim of U.S. citizenship to a U.S. Customs and Border Protection officer when he attempted to procure admission into the United States on May 12, 2000, at which time the record shows the Applicant was also in possession of a Form I-551, Resident Alien Card, in the name of another person. The Applicant's sworn statement from May 12, 2000 includes a statement where the Applicant claimed to be an American with a green card upon seeking admission. On December 23, 2015, we issued the Applicant a Notice of Intent to Dismiss (NOID). In response to the NOID, the Applicant contends that the Form I-862, Notice to Appear, placing him in removal proceedings was amended removing the allegation of false claim to U.S. citizenship. The Form I-862 retained an allegation of fraud or misrepresentation. The Applicant further asserts that although Form I-213, Record of Deportable/Inadmissible Alien, indicates that he claimed to have been a "naturalized" citizen, he could not have made a claim to be a "naturalized" citizen because he was using an interpreter and being new to the United States he would not have understood the citizenship process. He further contends that removal proceedings were terminated to allow him to pursue an adjustment of status application which indicates the Office of Chief Counsel believed he was not inadmissible under section 212(a)(6)(C)(ii) of the Act.

Here we concur with the Applicant that an amended Form I-862, Notice to Appear, dated March 15, 2012, withdrew allegations including that he had verbally presented himself as a citizen of the United States as indicated on the Form I-862, Notice to Appear, dated May 23, 2000. We find that the record reflects that on March 12, 2000, the Applicant attempted to procure admission to the United States by falsely claiming to be a lawful permanent resident. Based on a complete review and consideration of the entire record, we find that the Applicant is not inadmissible under section 212(a)(6)(C)(ii) of the Act for making a false claim to U.S. citizenship. However the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States through willful misrepresentation of a material fact, which he does not dispute. Although the Applicant claims that he made a timely retraction of his misrepresentation, the record does not include sufficient evidence to establish this.

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 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).

The Applicant asserts that his spouse receives medical treatment as they try to have a child, and that her stress and worry over him is affecting her health. The Applicant maintains that his spouse suffers anxiety with panic attacks. The Applicant's spouse contends that she cannot live without the Applicant and that because of worrying about him she suffers headaches and depression, is losing hair and weight, suffers intestinal problems, and lacks concentration. She states that she does not want to take anxiety medication because she is seeing a fertility doctor and is afraid anxiety medication would affect having a baby.

A psychological evaluation of the spouse, dated December 19, 2014, diagnoses her with unspecified depressive disorder with panic attacks and identified her as being obsessive compulsive as a result of

concern over the Applicant's immigration status. The psychologist states that stress over the Applicant's situation has comprised his spouse's health and indicates that her condition is likely to deteriorate. The psychologist notes that the Applicant's spouse wants to conceive and longs to have a family, but suffers panic attacks and is depressed, hopeless, and distracted. The evaluation concludes that the spouse would benefit from psychiatric consultation for medication and individual psychotherapy.

Medical documentation submitted to the record shows that the spouse has a history of endometriosis, anxiety, and infertility, and notes that she had extensive counseling on infertility. Medical documents also show the spouse has missed work due to health problems and had cysts removed.

The Applicant contends that without him, his spouse will likely lose the home they purchased because she cannot make payments alone on her income. The record contains bills and statements, and income documentation indicates that the Applicant makes more than half the family income.

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

We also find the record to establish that the Applicant's spouse would experience extreme hardship if she were to relocate to Lebanon with the Applicant. The Applicant maintains that he is a native of Syria, where he was raised and educated, but although he has never lived in Lebanon he obtained Lebanese citizenship through his father's birth there. Documents submitted to the record show the Applicant was born in Syria, with his birth certificate and identity documentation indicating he is of Lebanese nationality.

The Applicant states that his spouse is Armenian, is Christian, and does not speak Arabic, and that Lebanon, where she has no family, would be culturally, religiously, ethnically, and linguistically different. The Applicant's spouse states that she fears as a U.S. citizen she would be targeted in Lebanon. The spouse further maintains that she is close to her parents so she would suffer being separated from them, and states that because she is attempting to become pregnant, she needs medical attention and health insurance which she may not be able to receive if she relocated.

The U.S. Department of State warns that U.S. citizens in Lebanon should understand that they accept the risks of remaining in the country. A travel advisory indicates that sudden outbreaks of violence can occur at any time and that U.S. citizens should keep a low profile. It further notes that there is potential for death or injury because of terrorist bombings, that there have been incidents of cross-border shelling and air strikes of Lebanese villages from Syria, and reports of armed groups from Syria who kidnapped or attacked Lebanese citizens. *See* Travel Warning-U.S. Department of State, dated December 11, 2015.

The record shows that the Applicant's spouse has resided in the United States since 1988, becoming a U.S. citizen in 2011, and has no ties to Lebanon. Her inability to speak the language would be a

source of hardship. In addition, to relocate the Applicant's spouse would leave her family, her community, and her employment, while being concerned about her safety in Lebanon. It has thus been established that the Applicant's spouse would suffer extreme hardship were she to relocate to Lebanon with the Applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the Applicant has established that his 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 would face, regardless of whether she accompanies the Applicant or stays in the United States; the Applicant's employment and payment of taxes; letters of support; his long-term ties in the United States; the passage of time since his attempted entry to the United States by fraud or misrepresentation; and his apparent lack of a criminal record. The negative factors in this case are the Applicant's attempted entry to the United States by fraud or misrepresentation, his unauthorized stay, and his unauthorized employment. 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 K-K-M-*, ID# 14642 (AAO Feb. 24, 2016)