U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-N-

DATE: JAN. 13, 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 Mexico, 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. We dismissed a subsequent appeal. The matter is now before us on a motion to reopen and reconsider. The motion will be denied.

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.[1]

The Director found that the Applicant had not established that extreme hardship would be imposed on a qualifying relative. The Director further found that the Applicant did not merit a favorable exercise of discretion. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

In a decision dated July 17, 2012, we determined that the evidence in the record was insufficient to demonstrate that the challenges encountered by the qualifying relative met the extreme hardship standard. The appeal was dismissed accordingly.

On motion, filed on August 15, 2012, and received by us on December 17, 2015, the Applicant asserts that her spouse will suffer extreme hardship if her waiver application is not granted because he has unresolved medical issues and because he will be unable to care for the children without her support. With the motion the Applicant submits a brief, a declaration, biographic documents, financial documentation, medical information, and a birth certificate for the Applicant's nephew. The entire record was reviewed and considered in rendering this decision.

[1] Electronic USCIS records indicate that the Applicant's spouse became a naturalized U.S. citizen on November 27, 2012, subsequent to the filing of the instant motion.

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.

The record reflects that the Applicant attempted to enter the United States on January 24, 1996, by presenting a Mexican border crossing card not lawfully her own. Based on this information the Director found the Applicant inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act. The Applicant does not contest the finding of inadmissibility on motion.

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 dismissing the appeal we noted that although the Applicant asserted that she and her spouse were the legal guardians of two minor children born to the Applicant's sister who was unable to care for them due to her disability, no medical evidence concerning the sister had been submitted. We also noted that no birth certificate had been submitted for one of the children whose name had been handwritten on the guardianship documents. Moreover, we found that the evidence was insufficient to establish economic hardship beyond that ordinarily associated with removal or inadmissibility and that although the Applicant contended that she and her daughter had medical conditions, evidence submitted to the record did not demonstrate the severity of any condition. We noted a psychological evaluation dated April 7, 2007, diagnosed the Applicant's spouse with adjustment disorder with mixed anxiety and depressed mood and indicated that at the time of the evaluation he exhibited symptoms suggesting that he was unable to cope with difficult situations. We found, however, that although the evaluation indicated that the spouse would be referred to psychotherapy and for an evaluation to determine the need for medication, no subsequent documentary evidence had been submitted. We further noted that the Applicant's spouse maintained that life in Mexico was dangerous and not suitable for young children, but no assertions of relocation-related hardship to the Applicant's spouse had been made.

On motion, the Applicant's spouse asserts that without the Applicant he would feel a sense of emptiness. He contends that he and the Applicant have been able survive by combining their incomes, that he now earns less than previously because the restaurant where he worked acquired a new owner, and that without the Applicant his pay is insufficient to meet his obligations. The spouse maintains that he works long hours so he needs the Applicant to care for their daughter and two nephews for whom they care and that without the Applicant the children would be alone. The spouse states that the children are emotionally close to the Applicant so they would be devastated without her, which would cause him heartache. He further maintains that he has health issues including chest pains that doctors cannot diagnose and that he has had surgery to remove a growth, but that pain is returning so he may require more surgery and would then need the Applicant's support.

With respect to the emotional hardship referenced on motion, while we acknowledge the contentions in the record that the Applicant's spouse will experience emotional hardship were he to remain in the United States while his wife relocates abroad, the record does not establish the severity of this hardship or the effects on his daily life. As for the health issues referenced on motion, the medical documentation submitted on motion does not contain a clear explanation from a treating physician of the exact nature and severity of any condition the spouse has or of any treatment that would require the Applicant's physical presence in the United States. As for the financial hardship referenced, the financial documentation submitted on motion includes a single pay statement for the spouse from 2012 and a 2011 income tax return, but does not provide the spouse's current income or a complete list of family expenses and liabilities, or any assets, to establish that the spouse will experience financial hardship were the Applicant to relocate abroad. Nor has the Applicant established that she would be unable to obtain gainful employment abroad. Finally, we note that the children referenced in the Applicant's spouse's declaration are currently teenagers. The Applicant has not established that her spouse is unable to obtain alternate care for them were she to relocate abroad.

We recognize that the Applicant's spouse will endure hardship as a result of separation from the Applicant. However, on motion we find that the Applicant has not established that her spouse would experience extreme hardship if he were to remain in the United States while the Applicant relocated. The difficulties that the Applicant's spouse would face as a result of his separation from the Applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

With respect to relocating abroad to reside with the Applicant, the Applicant's spouse contends on motion that he would earn a much lower salary and therefore be unable to meet financial obligations and support his family. The spouse maintains that at his age he would face discrimination in Mexico, would have to take low paying jobs, and would be unable to support his family. He states that he fears medical care and violence in Mexico, and further references that he fears for his daughter's education, which he asserts would be expensive in Mexico with few opportunities for scholarships and loans. The record does not contain any documentation in support of the assertions made on motion. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, on motion we find that the record does not establish that the Applicant's spouse would experience extreme hardship were he to relocate to Mexico, his native country, to reside with the Applicant as a result of her inadmissibility.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the Applicant has not established extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. As the Applicant has not demonstrated extreme hardship to a qualifying relative, we need not consider whether the Applicant warrants a waiver in the exercise of discretion.

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, the motions are denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of R-N-*, ID# 16607 (AAO Jan. 13, 2016)