U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-A-R-V-

DATE: JAN. 15, 2016

APPEAL OF WASHINGTON FIELD OFFICE DECISION

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

The Applicant, a native and citizen of El Salvador, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Washington Field Office, 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) of the Act, 8 U.S.C. § 1182(a)(6)(C), for presenting false information as to the date and manner of his entry to the United States on multiple Forms I-821, Application for Temporary Protected Status, knowing that the true date and manner of entry would disqualify him for such status. The Applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

In a November 7, 2014, decision, the Director concluded that the Applicant did not establish that his spouse would suffer extreme hardship if the waiver was not granted and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant asserts that the Director did not give sufficient weight to the psychological report submitted and erred by not considering the positive factors and hardship factors in his case in the aggregate. The Applicant submits a brief and additional evidence in support of his appeal.

The record contains, but is not limited to: a brief; identity and relationship documents; a psychological evaluation and a follow-up letter; school records of the Applicant; reports on conditions in El Salvador; financial records; photographs; and statements from the Applicant, his qualifying spouse, and relatives. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (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:

> (1)The Attorney General [now the Secretary 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 reflects that on multiple occasions, the Applicant knowingly misrepresented the date and manner of his entry into the United States. On July 10, 2014, the Applicant, under oath, admitted that he: entered the United States for the first and only time as a nonimmigrant visitor on March 13, 2001; knowingly gave a false date and manner of entry on his Form I-821, Application for Temporary Protected Status; and, knew that putting his true date and manner of entry to the United States would disqualify him for Temporary Protected Status (TPS). The Applicant misrepresented his date of entry on many separate applications to the United States Citizenship and Immigration Services (USCIS). Specifically, he provided a false date of entry on applications for TPS and on Forms I-765, Application for Employment Authorization. Based on this false information, he was accorded the benefit of TPS from 2002 to 2013, and the benefit of work authorization throughout much of that period. The Applicant also admitted under oath that he submitted a fraudulent employment letter, paystubs, and receipts to USCIS as evidence of his physical presence in the United States with his initial TPS application. The Applicant asserts that this fraud was guided and facilitated by an unnamed preparer. The Applicant does not contest his inadmissibility on appeal. We therefore affirm that the Applicant is inadmissible under section 212(a)(6)(C) of the Act for procuring a benefit under the Act, temporary protected status, through fraud or misrepresentation. The Applicant's qualifying relative for a waiver of this inadmissibility is his U.S. citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

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 will suffer emotional and financial hardship if she relocates to El Salvador. The Applicant's 32-year old spouse asserts she has no family in El Salvador, except her mother from whom she is estranged, and that she has lived in the United States since she was 7 years old. The Applicant submits statements from family members describing his spouse's close family ties. The Applicant's spouse states that she has played an active role in raising her younger sisters. She adds that one of her sisters temporarily lived with her and the Applicant because her mother was deported. She indicates she continues to help her sisters and cousins with their homework, buying groceries, and paying for some of their expenses. She asserts she does not feel she can leave her sisters because they still need her. She acknowledges it would be very difficult to adapt to live in El Salvador because she migrated at an early age and has acculturated to the United States. The Applicant's spouse states that she visited El Salvador in 2011 and was struck by how unsafe she felt.

The Applicant provides a Department of State travel warning, indicating that El Salvador has one of the highest per capita murder rates in the world and that the government lacks sufficient resources to deter crime. The Applicant and his spouse were born in the department of an area with a homicide rate higher than the national average. Another report indicates that gangs, international organized crime and drug trafficking organizations all contribute to the rise of violence in El Salvador.

The Applicant's spouse claims that her employment opportunities in El Salvador are poor, particularly due to her lack of Spanish speaking skills. In support of her assertions, the Applicant submits a report indicating that El Salvador's unemployment rate is 6.9% and that the economy has a significant amount of underemployment.

The record supports the Applicant's assertions that his spouse would experience extreme hardship upon relocation to El Salvador. We first note that the Department of Homeland Security (DHS) has granted temporary protected status (TPS) to nationals of El Salvador residing in the United States through September 9, 2016. This TPS designation was granted to El Salvadoran nationals as DHS determined that El Salvador was "unable, temporarily, to handle adequately the return" of its nationals due to the environmental disaster and substantial disruption of living conditions caused by multiple earthquakes in 2001. DHS granted extensions of TPS after making the determination that conditions in El Salvador were still too poor to absorb the return of their nationals. Countries are designated for TPS in situations where: there is an ongoing armed conflict within the state and due to

that conflict, return of nationals to that state would pose a serious threat to their personal safety; the state has suffered an environmental disaster resulting in a substantial, temporary disruption of living conditions, the state is temporarily unable to handle adequately the return of its nationals, and the state has requested TPS designation; or there exist other extraordinary and temporary conditions in the state that prevent nationals from returning in safety.

The record also reflects that the Applicant's spouse has resided in the United States since a tender age and she has close family ties in the United States. In addition, the evidence submitted establishes that she assumed many caretaker responsibilities for her younger sisters starting in her high school years. Although the spouse was born in El Salvador, the record does not reflect that she has ties to El Salvador, other than to the Applicant. Furthermore, the Department of State travel warning, as well as information in the TPS designation, supports her assertions that she would face safety-related issues in El Salvador. Based on the totality of the hardship factors presented, we find that the Applicant has shown that his spouse would experience extreme hardship if she relocated to El Salvador.

The Applicant asserts that his spouse will suffer emotional and financial hardship in the event of separation. In support of his claim of extreme hardship in the event he is separated from his spouse, the Applicant submits statements from his spouse and himself. He also submits a psychological evaluation and financial records.

The Applicant's spouse states she feels her life is dependent on the Applicant's love and support and that he keeps her sane. In the psychological evaluation, the psychologist states that clinical and test data indicate that the Applicant's spouse suffers from an anxiety disorder and major depression. The psychologist adds that the Applicant's spouse suffers from a psychological fragility caused by the significant emotional neglect and abandonment by her parents, as well as the traumatic experiences as a young adult when she was exploited and abused by a romantic partner. He finds that relocation would put her mental health stability at risk. The psychologist concludes that given the Applicant's spouse's mental health problems that predate her relationship with the Applicant, the intensity of emotional distress caused by separation would have devastating consequences for her.

The Applicant's spouse states that she needs the Applicant's income in order to meet their mortgage payments. The most recent documentation in the record concerning the income of the Applicant and his spouse is the couple's 2012 Form 1040, Individual Income Tax Return, showing that the Applicant earned $35,000 and his spouse earned $65,000 that year. The Applicant submits an income and expense statement, showing that their monthly mortgage payment is $1,530 and their car payment is almost $400. The evidence establishes that the Applicant's spouse needs the Applicant's financial assistance to meet her financial obligations.

The evidence of hardship, considered in the aggregate, establish that the Applicant's spouse would suffer extreme hardship if the instant application is denied and she is separated from her spouse. The suffering experienced by the Applicant's spouse would surpass the hardship typically encountered in instances of separation.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the Applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

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 matter are the extreme hardship the Applicant's spouse would face, the Applicant's community and family ties in the United States, the Applicant's voluntary admission of and remorse for his misrepresentations, the length of time he has spent in the United States, his history of stable employment, the existence of property ties, and evidence of his volunteer work as a fire fighter.

The unfavorable factors are the Applicant's willful misrepresentations to officials of the U.S. government in obtaining a benefit under the Act. We note that the Applicant does not appear to have a criminal record.

We find that the hardship imposed on the Applicant's spouse as a result of his inadmissibility outweighs the unfavorable factors. Therefore, a favorable exercise of discretion is warranted in this matter.

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 F-A-R-V-*, ID# 11083 (AAO Jan. 15, 2016)