U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-R-A-F-

DATE: JULY 19, 2016

APPEAL OF DENVER, COLORADO FIELD OFFICE DECISION

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

The Applicant, a native of Pakistan and citizen of Canada, seeks a waiver of inadmissibility for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to that of a lawful permanent resident must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The USCIS Field Office Director, Denver, Colorado, denied the application. The Director concluded that the Applicant had not established that a bar to his admission would impose extreme hardship to a qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant submits a brief and additional evidence. He asserts that the Director erred by applying a too stringent standard for extreme hardship.

Upon *de novo* review, we will dismiss the appeal. The evidence, including the additional evidence submitted on appeal, does not establish that the Applicant's spouse would experience extreme hardship.

I. LAW

The Applicant is seeking to adjust status to that of a lawful permanent resident and has been found inadmissible for fraud or misrepresentation, specifically, for presenting a photo-substituted passport and visa to U.S. inspection officers in an attempt to procure entry into the United States in 1991.

Section 212(a)(6)(C)(i) of the Act renders inadmissible any foreign national 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 the Act.

Section 212(i) of the Act provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national.

Decades of case law have contributed to the meaning of extreme hardship. 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). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; *see also Matter of Shaughnessy,* 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was "no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects"). 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); *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). 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).

II. ANALYSIS

The only issue to be addressed on appeal is whether the Applicant's qualifying relative or relatives would experience extreme hardship if the waiver application is denied. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.[1]

On appeal, the Applicant asserts that his spouse would experience extreme hardship if the waiver is denied, whether she remains in the United States without him or accompanies him to Canada or Pakistan. The evidence in the record, considered in the aggregate, does not establish that the Applicant's spouse would experience extreme hardship if his application is denied. Because the Applicant has not established extreme hardship to a qualifying relative, we will not address whether the Applicant merits a waiver as a matter of discretion.

[1] The record shows that the Applicant attempted to enter the United States in August 1991 using a photo-substituted passport and visa. An immigration judge ordered the Applicant excluded. The Director also found the Applicant inadmissible under section 212(a)(9)(A) of the Act, for which he will need to file Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

A. Hardship

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case, the Applicant's U.S. citizen spouse and lawful permanent resident parents.[2] The Applicant does not indicate whether his spouse intends to remain in the United States or relocate with him should he depart or be removed from the United States, but the Applicant claims his spouse would experience extreme hardship under either scenario.

In support of the claim of hardship to his spouse, the Applicant submitted the following evidence with the Form I-601: a brief; declarations of the Applicant and his spouse; financial records; school records; and medical records for the Applicant's spouse, her father, and one of their sons. On appeal, the Applicant submits a brief, his spouse's declaration, additional medical records, financial records, and an unpublished Administrative Appeals Office decision.[3]

The Applicant claims that if his spouse remains in the United States without him, she will suffer emotional and financial hardship. As to emotional hardship, the Applicant's spouse states that she relies upon the Applicant to help care for her parents, who live with them, and that it would be devastating to her if they are separated. She states that she feels very sad and depressed when she considers living apart from the Applicant. She states that the Applicant is close to their sons and she worries about the effect of separation on them. The Applicant's spouse states that she would experience hardship directly as the result of separation and indirectly to the extent it would adversely affect her parents and their children.

The Applicant's spouse states that the Applicant is the sole source of income for the family. She states that they established a family business together and she would be unable to run the business without the Applicant. The Applicant submits income tax returns showing the business generated $70,000 income in 2014; $37,500 in 2013; and $34,900 in 2011. The Applicant also submits a Form 1099 showing that his spouse received $29,500 in nonemployee compensation from the family business in 2012. The Applicant submits evidence that he and his spouse have approximately $211,000 in personal credit card debt. According to the record, their monthly expenses include payments for health insurance amounting to $375, a mortgage of $820, and $400 in utilities. The Applicant has shown that his spouse's concerns about their debt is supported by the record and constitutes one factor to be analyzed in the determination of hardship.

[2] Although the Applicant indicated on his application that he was not asserting his parents would experience extreme hardship if his waiver were not approved, his spouse states that the Applicant financially supports his parents, as they have no other income. The Applicant provides no corroborating evidence to establish that he financially supports his parents. The record includes no other evidence concerning hardship to the Applicant's parents. According to his Form G-325A, Biographic Information, moreover, his parents reside in Pakistan. The evidence does not show that the Applicant's parents would suffer extreme hardship either in Pakistan or in the United States.

[3] The Applicant submits the decision to show similarities between the medical hardship of a qualifying relative in that case, in which the appeal was sustained, and in his case. Our unpublished decisions, however, are not binding precedent. *See* 8 C.F.R. § 103.3(c).

The Applicant does not assert that he is unable to work in either Canada or Pakistan, nor has he shown that his spouse is unable to earn income to help provide for the family. The record contains the Applicant's spouse's Form G-325A, Biographic Information, showing she had been employed from 2002 through 2013 at the family business. The evidence offered to establish that the Applicant's spouse cannot run the family business alone is limited to the Applicant's spouse's testimony.

The evidence of emotional hardship consists of statements from the Applicant and his spouse without additional details or supporting documentation. Although the Applicant's spouse's emotional and psychological response to the prospect of being separated from him is understandable and relevant to evaluating her hardship, the record lacks documentation that supports the contention that this hardship is a significant factor. The record does not contain sufficient evidence to establish the emotional, psychological, financial, or other impacts of separation on the Applicant's spouse are cumulatively beyond the hardships commonly experienced upon separation. The Applicant has not established that his spouse would experience extreme hardship if she remained in the United States in the event he is removed.

The Applicant claims that his spouse will suffer emotional, medical, and financial hardship if she relocates with him. The Applicant's spouse asserts that she would experience emotional hardship if she were to relocate because she would be separated from her parents. The Applicant's spouse states that her parents are very dependent upon her and the Applicant for daily assistance, which includes taking them to doctors' appointments. She states that her father is partially blind and unable to work. The record contains evidence confirming that the Applicant's spouse's father has vision in only one eye but it is unclear about whether his condition is permanent. She further states that her parents live with her and the Applicant and that they are financially dependent upon them. The Applicant provides no evidence to corroborate his spouse's claims that he supports her parents financially. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *In re Soffici*, 22 I&N Dec. 158, 165 (Reg. Comm. 1998). *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record contains references to hardship the Applicant's children would experience if his waiver application were denied. Although Congress did not include hardship to a foreign national's children as a factor to be considered in assessing extreme hardship, we recognize that the Applicant's spouse could experience hardship as the result of their children's hardship. The Applicant's spouse asserts that their children, ages and would struggle to adjust to life in another country. The issue of their children's adjustment is important to consider in terms of hardship to the Applicant's spouse; however, the record lacks evidence to corroborate claims that their adjustment would be so difficult as to cause her hardship. The Applicant's spouse also states that their year-old son has been diagnosed with chronic ulcerative colitis. According to a nurse coordinator's letter, their son should remain in the United States for continuity of care to monitor his ulcerative colitis. Medical progress notes from 2015 state that the Applicant's son's "ulcerative colitis appears to be controlled." The evidence also indicates that their son has a small atrial septal

defect and mild intermittent asthma and that he should have his atrial septal defect checked again in four years. Though these medical conditions are serious, the evidence does not support the Applicant's contention that their son's health requires him to remain in this country. The Applicant's son's medical issues do not appear to be so severe as to cause hardship to the Applicant's spouse if the application is denied.

As to her own medical hardship, the Applicant's spouse states that she was injured in a car accident in 2013. The Applicant submits evidence that his spouse was prescribed pain medication for a back injury caused by the accident and that in 2013 and 2014, she received acupuncture treatments for pain resulting from that injury. The Applicant also submits his spouse's doctor's referral for routine medical tests, including a colonoscopy.

The Applicant does not provide evidence addressing the availability and suitability of medical care in Canada or Pakistan. The Applicant submits evidence that his spouse and children have health care insurance. The Applicant's spouse states that they will lose this insurance if they relocate. The Applicant does not submit evidence to address how the family could manage their health-care expenses in Canada or Pakistan.

As to financial hardship, the Applicant's spouse states that abandoning their business and starting over again will cause her hardship, because they have significant business debt and a large mortgage amounting to over $200,000. Evidence in the record, consisting of invoices from wholesalers, business credit card statements, and mortgage statements, corroborates her claims. The Applicant does not indicate whether he could return his inventory to the wholesalers for a refund or sell his inventory at another location. The Applicant also does not address his ability to support his family from Canada or Pakistan and whether selling their home in the United States would satisfy their mortgage and alleviate their debt. Though the Applicant has provided evidence of a degree of financial hardship to his spouse, he has not provided information that would permit accurately assessing the extent of their financial hardship, were they to relocate to Canada or Pakistan together.

The record does not establish that the hardships demonstrated rise to the level of extreme hardship when considered both individually and cumulatively, because the record does not provide sufficient evidence to establish that the emotional, financial, or medical impacts of relocation are cumulatively above and beyond the hardships normally experienced in these circumstances. As the Applicant has not demonstrated extreme hardship to a qualifying relative, we need not consider whether he warrants a waiver in the exercise of discretion.

III. CONCLUSION

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. The record does not establish that the Applicant's spouse would experience extreme hardship if the application is denied.

ORDER: The appeal is dismissed.

Cite as *Matter of R-R-A-F-*, ID# 17002 (AAO July 19, 2016)