U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-P-L-Y-

DATE: JUNE 7, 2016

APPEAL OF SAN JOSE, CALIFORNIA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of the Philippines, 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 lawful permanent residence 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 San Jose Field Office Director, Santa Clara, California, denied the Form I-601. The Director concluded that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, specifically for attempting to procure a benefit under the Act by submitting a fraudulent Form I-687, Application for Status as a Temporary Resident. The Director then determined that the Applicant had not established that denial of admission would result in extreme hardship to his parents, the Applicant's two qualifying relatives.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in not finding that his parents' hardship would be extreme and that he warrants a favorable exercise of discretion.

Upon *de novo* review, we will sustain the appeal.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a fraud or misrepresentation, specifically submitting an application with false information in an attempt to gain a benefit under the Act.

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, 8 U.S.C. § 1182(i), provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. 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 issues presented on appeal are whether the Applicant's parents would experience extreme hardship if the waiver is denied, whether they remained in the United States without him or accompanied him to the Philippines. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record. The Applicant indicates that his parents intend to remain in the United States if he is removed. The Applicant states his parents would experience extreme hardship upon separation because given their age, the separation will be permanent. The Applicant asserts that his parents will not relocate to the Philippines because the rest of their family is in the United States, they rely on their children for daily care, and they want continued access to the U.S. health care system.

The evidence in the record, considered both individually and cumulatively, establishes that the hardship claimed and demonstrated to the Applicant's lawful permanent resident parents rises above the common consequences of removal or refusal of admission to the level of extreme hardship, and the Applicant merits a waiver as a matter of discretion.

B. Waiver

The Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives, in this case the Applicant's parents. In support of his hardship claims, the Applicant submitted the following evidence. With the Form I-601, the Applicant submitted statements from himself, biographical documents for his family members, and financial documentation. On appeal, the Applicant submits duplicates of biographical documents for his family and medical documentation for his parents.

The Applicant's hardship claims rest primarily with the concern that if he is separated from his parents, who are 80 and 71 years old, the separation will be permanent because their advanced age and the great distance and expense of travel to the Philippines make it unlikely they will be able to visit him. He states that his parents will also suffer extreme emotional hardship if he returns to the Philippines and brings his two daughters with him. He states that his parents fear that if he leaves with his daughters, they will never see their grandchildren again. The Applicant also states that his parents are concerned for his safety in the Philippines, because he has not lived there for a long time. He states that his brother, his only sibling, brought his parents to the United States so that the family could be together, so that he and his brother could help care for his parents, and so his parents could have access to health care. Medical documentation indicates that the Applicant's father suffered from bronchitis and his mother suffers from hypertension and a heart murmur. He states that his entire family lives in the United States, specifically in the California area. He claims further that he shares responsibility for caring for his parents with his brother and that his brother would not be able to fully care for them on his own. Tax documentation in the record shows that the Applicant's parents are listed as dependents on the Applicant's brother's tax return, but medical documentation also shows that the Applicant takes his parents to appointments and signs their medical documentation as their guardian.

The record establishes that the Applicant's parents have extensive family ties to the United States and given their age, would be unable to relocate or visit the Philippines. Their advanced age and the distance of the Philippines also indicate that if the Applicant relocated with his children and wife, the separation is likely to be permanent. Based on the Applicant's parents' strong family ties to the United States, their inability to travel to the Philippines given their age, and the resulting permanent separation if the Applicant were removed from the United States, their hardship rises to the level of extreme hardship.

Therefore, the record establishes that refusal of admission would result in extreme hardship to the Applicant's parents.

C. Discretion

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. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident

with the social and humane considerations presented 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). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the foreign national and his or her family, service in the U.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 good character. *Id.*

The favorable factors include extreme hardship to the Applicant's lawful permanent resident parents, hardship to the Applicant's children and brother, the Applicant's employment in the United States as a medical lab technician since 1992, the Applicant's payment of taxes, the Applicant's cooperation with immigration officers investigating fraud, and the Applicant's apparent lack of a criminal record. The unfavorable factors include the Applicant's fraud and periods of unauthorized presence in the United States. We find that the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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 met that burden. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of R-P-L-Y-*, ID# 16754 (AAO June 7, 2016)