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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-N-

DATE: MAR. 23, 2016

APPEAL OF CHARLOTTE FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Vietnam, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Director, Charlotte, North Carolina Field Office, denied the application. The matter is now before us on appeal. The appeal will be sustained.

In a decision dated July 7, 2015, the Director found the Applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure a visa, or having procured a visa and admission, to the United States through fraud or misrepresentation. The Applicant seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of an approved Form I-130, Petition for Alien Relative. The Director concluded the Applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application, accordingly.

On appeal, the Applicant asserts she provided sufficient evidence to show that extreme hardship to her spouse would result from her inability to remain in the United States. In support, she provides documentation including: statements of the qualifying relative and the Applicant; articles regarding country conditions, including human rights, religious freedom, medical care, and employment; a psychological evaluation; medical records; copies of marriage certificates, birth certificates, and travel documents; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record reflects that the Applicant entered the country legally as a B-2 visitor on July 6, 2012, married the Petitioner on [redacted] 2010, and filed an application for lawful permanent resident status concurrently with the immigrant petition filed by her U.S. citizen spouse on February 21, 2013. Upon investigation, USCIS determined that the Applicant had obtained by fraud the non-

immigrant visa she used to enter the country in 2012, after she admitted paying $38,000[1] for assistance in obtaining that visa. In 2014 and 2015, USCIS therefore issued, respectively, a notice of intent to deny (NOID) and a supplemental NOID regarding the application for permanent residence. Observing that the Applicant had experienced denial of four NIV applications and was thus familiar with the NIV process, the Director concluded that the evidence showed the Applicant was aware that the $38,000 paid so exceeded the $160 NIV application fee that she knew or should have known that it was a bribe. Although the Applicant continued to deny having violated section 212(a)(6)(C)(i) of the Act, her response to the supplemental NOID included an application for a waiver of her inadmissibility for procuring a visa by fraud or misrepresentation.

A foreign national seeking admission must establish admissibility "clearly and beyond doubt." *See* section 235(b)(2)(A) of the Act; *see also* section 240(c)(2)(A) of the Act. The same is true for demonstrating admissibility in the context of an application for adjustment of status. *See generally Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008); *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008); *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). In making a finding of inadmissibility under section 212(a)(6)(C)(i), there must be evidence in the record showing that a reasonable person would find that an applicant used fraud or that he or she willfully misrepresented a material fact in an attempt to obtain a visa, other documentation, admission into the United States, or any other immigration benefit. USCIS Policy Manual, Volume 8 – Admissibility, Part J – Fraud and Willful Misrepresentation, Chapter 3(A)(1). We find that payment of fees amounting to several hundred times the published NIV application fee, whether by the Applicant herself or on her behalf by her mother, would lead a reasonable person to believe that the excessive sum represented a bribe.

The record reflects that the Applicant was one of nearly 500 NIV applicants issued visas by a dishonest consular official at the center of a conspiracy involving U.S. and Vietnamese nationals as middlemen. The supplemental NOID described the fraudulent scheme, described the Applicant's involvement, and requested information. Her claims of ignorance are unsupported by the evidence and outweighed by reasonable inferences from the fact that she had previously sought a visa unsuccessfully four times (hence, was aware of the true cost of a visa application). In addition, as noted in the supplemental NOID, the Applicant also misrepresented on the NIV application itself the fact that she had received assistance filling out the form, and the failure to divulge this assistance was a material omission affecting discovery and investigation of the conspiracy.

The record indicates that the Applicant procured a visa by fraud or misrepresentation and is therefore inadmissible under section 212(a)(6)(C)(i) of the Act and requires a waiver of inadmissibility under section 212(i). We therefore consider whether the Applicant has satisfied the requirements for receiving a waiver of her inadmissibility.

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

[1] The record reflects that the Applicant claims it was her mother who paid this amount on the Applicant's behalf. We need not resolve this issue, due to the presence of other noted misrepresentations regarding the visa application.

> 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 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 and her qualifying relative both assert that relocating would cause him extreme hardship due to his status as a former political refugee who fled Vietnam with his parents at a young age. The record reflects that they first attempted to flee the country with him when he was an infant, but were forced to return to Vietnam when his father fell ill in a refugee camp. After his father was imprisoned and released, he, his wife, and their two children continued trying to escape overseas. Eventually, they were able to depart Vietnam as refugees. The qualifying relative thus arrived in the United States in 1998 at the age of 18 with his parents and younger brother. Until recently, when his father moved to [redacted] in search of work, they all lived together in his parents' house. He claims that, due to the status of his father – whose own father was killed by the Viet Cong -- as an opponent of the Communist regime, and his own lack of education or experience there,[2] the

[2] The Applicant's spouse lived in refugee camps in Malaysia and Indonesia for five years after the family left Vietnam in

qualifying relative has no contacts in Vietnam to facilitate his return. Although the Applicant's family lives in Vietnam, the qualifying relative and the Applicant both assert that her family will not help them. The Applicant's spouse asserts that his religious faith would compound his integration problems as a returning political refugee, since the society would be unwelcoming to a practicing Roman Catholic. The record also shows that his wife was six-months pregnant when the appeal was filed, and the qualifying relative claims that fear for the health and well-being of his unborn child represents a significant hardship.

Immigration records substantiate the qualifying relative's refugee history, while official government reporting regarding country conditions that include religious persecution establishes that he would likely encounter significantly greater adjustment problems than those usually associated with returning to one's homeland. Although the updated record confirms that the Applicant was expecting the couple's first child in 2015, without evidence of the child's birth, we have no basis for assessing the claimed lack of accessibility to pediatric care as a hardship factor for the child's father. We note, however, that a psychologist has diagnosed the Applicant's spouse with anxiety and depression based on symptoms of emotional distress, including feelings of nervousness and hopelessness, insomnia, appetite fluctuation, lack of energy and ability to concentrate, and mood swings from frequent tearfulness to irritability. *See* Psychological Evaluation, May 14, 2014. The report notes that the his distress stems both from fear of returning to Vietnam due to consequences to himself and his child and from worry about remaining here without his wife, due to her role in easing the psychological trauma he experienced from witnessing robberies and violence while living in harsh, refugee camp conditions between the ages of 10 and 15.

The qualifying relative further claims that he would be unable to support his family in Vietnam due to inability to ply his trade as a nail technician in a country where only women hold this job. Finally, he asserts that, as the elder of two sons responsible both for his elderly parents and younger brother, leaving the country would entail hardships: first, the inability to support them financially from Vietnam leading to the loss of their home and, second, the possibility that his relocation would further threaten his parents' fragile health and find him absent during their final years. The record substantiates the claims that the Applicant and her spouse are the sole support of an extended family unit of four or five adults,[3] as the qualifying relative's elderly parents have ailments that have left them unable to find work and his brother is still pursuing his education. Based on a totality of the circumstances, we conclude the Applicant has established that her spouse would suffer extreme hardship were he to accompany her overseas.

The Applicant claims that if she cannot remain in the United States, the impact of her absence upon her spouse would exceed the common or typical consequence of inadmissibility and rise to the level of extreme due to the resulting loss of her emotional and financial support. We have already noted the psychological report stating that fear the Applicant may have to leave the country is causing her spouse significant emotional distress. That report linked childhood traumas suffered during five

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1990.

[3] Regarding household size, besides lack of evidence regarding the anticipated birth of their son the parties state that the Applicant's father-in-law is in seeking work in the commercial fishing industry.

years in refugee camps to the qualifying relative's later problems with drug abuse after arrival here, involvement with a "bad crowd," and imprisonment. For this reason, the psychologist states that the qualifying relative relies upon the Applicant for essential emotional support and notes, further, that the need for her support together with awareness of impending fatherhood have created a strong bond with the Applicant. *See Id.* Regarding the claim of financial hardship, tax records show that the Applicant's contribution represents nearly half of household income. The couple's 2014 1099 forms reflect slightly over $40,000 in earned income, while the couple's 2013 joint federal tax return shows adjusted gross income of about $22,000 on just over $34,000 in wages. There is evidence the qualifying relative's expenses include health insurance, a car loan, utilities, and daily living costs, as well as about $400 in monthly rent paid toward his parents' mortgage.[4] It appears that, by reducing household income to nearly $20,000, loss of the Applicant's contribution will negatively affect her spouse's ability to both meet his U.S. financial obligations and support the Applicant in Vietnam. The evidence thus indicates he would likely be unable to afford the cost of traveling to visit his wife to ease their separation.

For all these reasons, the cumulative effect of the hardships the Applicant's husband will experience due to the Applicant's inadmissibility rises to the level of extreme. We conclude based on the evidence provided that, were her husband to remain in the United States without the Applicant due to her inadmissibility or relocate to continue living with her, he would suffer hardship beyond those problems normally associated with family separation.

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,

[4] The record indicates that, although the family residence is not titled in the qualifying relative's name, but rather owned by his parents, his rent payment is used to pay the mortgage. His claim that the mortgage will go unpaid without this contribution is supported by the fact that both his parents appear to be unemployed.

> 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 hardships the Applicant's spouse will face if the Applicant were to reside in Vietnam, regardless of whether he accompanied her or remained in the United States; the Applicant's lack of any criminal record; the couple's strong U.S. ties, including supporting an extended family unit; and evidence of gainful employment. The unfavorable factors in this matter are the Applicant's procurement of a visa by fraud or misrepresentation.

Although the Applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and 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 will sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of V-N-*, ID# 15797 (AAO Mar. 23, 2016)