U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-K-J-

DATE: MAY 31, 2016

APPEAL OF PHILADELPHIA, PENNSYLVANIA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of India, 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 Field Office Director, Philadelphia, Pennsylvania, denied the application. The Director concluded that the Applicant was inadmissible for fraud or misrepresentation. The Director then determined that the Applicant had not established that denial of admission would result in extreme hardship to his spouse.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the new evidence establishes that his spouse would suffer extreme hardship.

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 for providing false information about his prior education and employment in connection with his employment-based petitions and nonimmigrant visa applications.

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 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 presented on appeal is whether the Applicant's spouse would experience extreme hardship if the waiver is denied, whether she remained in the United States without him or accompanied him to India. The Applicant claims that his spouse would experience extreme hardship in both scenarios. He states that she would suffer financial, medical, and emotional hardship if she remains in the United States without him. Were she to relocate to India, he maintains that she would endure medical and emotional hardship. The Applicant does not contest on appeal the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.

The evidence in the record, considered cumulatively, establishes that the Applicant's spouse would experience extreme hardship if she were to relocate to India. The record further reflects that the positive factors in the case outweigh the negative factors and that a favorable exercise of discretion is therefore warranted.

A. Waiver

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case his spouse.

In support of these hardship claims, the Applicant submitted the following evidence. With the Form I-601, he submitted a statement from his spouse and medical and financial records. The record also contains copies of birth and marriage certificates, immigration documents, criminal court records, tax and financial records, insurance documents, lease agreements, and employment records. On appeal, the Applicant submits a statement from himself, updated financial records, a psychological evaluation of his spouse, letters from his spouse's physicians, and documentation about wages in India.

The Applicant claims that in India his spouse would experience medical and emotional hardship. Regarding medical hardship, he states that his spouse suffers from hypertension, diabetes mellitus, left ventricular hypertrophy, and chronic obstructive pulmonary disease. He submitted letters from her physicians which corroborate his statement and further indicate that his spouse has the added complication of having uncontrollable diabetes mellitus and drug-resistant hypertension. The physicians state that her medical conditions affect her daily functioning, and the extreme heat in India would be detrimental to her health. The Applicant maintains that his spouse currently has health insurance through her employer but in India she would not be able to afford health insurance or suitable health care. He submitted documentation about minimum wage in the state of Gujarat, India.

As for emotional hardship, the Applicant's spouse states that she has a close relationship with her son, mother, siblings, nieces and nephews, and grandchildren and that separation from them would be hard. Tax records show that in 2011 her niece and nephew lived with her and were dependent on her financially. The record further shows that the Applicant's spouse is in her 50s and was born and raised in the United States and has no family ties to India. It also shows that she has worked as an environmental service worker at the same hospital for 17 years. Evidence establishes that the Applicant's spouse has significant medical conditions and that the climate in India would be detrimental to her health. Evidence further establishes that long-term separation from her community, gainful employment, family members, and the physicians who are knowledgeable about her medical conditions and treatment plan would cause her considerable hardship. The evidence in the record, considered cumulatively, thus demonstrates that the Applicant's spouse would experience extreme hardship if she were to relocate to India.

B. 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.*

In this matter, the favorable factors are the extreme hardship that the Applicant's spouse would endure if she were to relocate to India, the Applicant's gainful employment and payment of taxes since 2011, the care and support he provides to his spouse and her family, his 8 years of residence in the United States, and the passage of 8 years since the fraud or misrepresentation rendering him inadmissible. The unfavorable factors in this matter are the Applicant's misrepresentations in connection with his employment-based petitions and nonimmigrant visa applications, his unauthorized presence and employment in the United States, and his July 2010 crimes of misdemeanor driving under the influence and public drunkenness. Regarding these convictions, the court placed the Applicant in an accelerated rehabilitative disposition program and on probation for 1 year. The record reflects that he successfully completed his probation and complied with all conditions, including the payment of fines, costs, and restitution. The record contains no other information about encounters with law enforcement. In this case, we find that the positive factors outweigh the negative factors, and a favorable exercise of discretion is therefore 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. The evidence establishes that if she were to relocate to India, his spouse would suffer extreme hardship. Further, the record reflects that the Applicant merits a favorable exercise of discretion.

ORDER: The appeal is sustained.

Cite as *Matter of J-K-J-*, ID# 16412 (AAO May 31, 2016)