U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-O-N-

DATE: SEPT. 12, 2016

APPEAL OF BALTIMORE, MARYLAND FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Israel, 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 Director, Baltimore, Maryland Field Office, denied the application. The Director concluded that the Applicant had not established that his U.S. citizen spouse would suffer extreme hardship if the application were denied.

The matter is now before us on appeal. In the appeal, the Applicant asserts that the Director erred in finding him inadmissible for fraud or misrepresentation and the evidence insufficient to establish extreme hardship. He submits a brief and additional evidence.

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

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 submitting altered documents with his Forms I-539, Application to Extend/Change Nonimmigrant Status, to create the appearance that he was in lawful nonimmigrant status at the time of filing.

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. PROCEDURAL HISTORY

The record reflects that the Applicant entered the United States in February 2003 with a nonimmigrant visitor visa, with his period of authorized stay valid until August 2003. In August 2003 he filed a Form I-539, Application to Extend/Change Nonimmigrant Status. The application was approved, and he was authorized to stay in the United States until February 2004. The Applicant filed a second Form I-539 in February 2004. After additional evidence was requested and the Applicant did not provide it, the application was denied. The Applicant filed a third Form I-539 in July 2004, which was denied because the Applicant did not respond to a request for evidence. According to the record, the Applicant filed his fourth Form I-539 in October 2006 with an altered Form I-94; an altered Form I-797A, Approval Notice; an attorney's letter, indicating the attorney represented the Applicant in relation to injuries sustained in an automobile accident; and an Israeli purchase agreement for real estate

The Applicant married a U.S. citizen in 2011, who filed a Form I-130, Petition for Alien Relative, on his behalf. The Applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The Director advised the Applicant to file a waiver application if he believed he was eligible for a waiver for fraud in connection with his Form I-539 filing.

III. ANALYSIS

On appeal, the Applicant asserts that he is not inadmissible because he did not intentionally make a misrepresentation and that his former attorney is responsible for any fraud related to his Form I-539 application. He further asserts that the record does not contain sufficient evidence to make a finding of inadmissibility for misrepresentation or fraud. Alternatively, the Applicant asserts that his U.S. citizen spouse would suffer extreme hardship if his waiver application is denied, whether she remained in the United States without him or accompanied him to Israel.

A. Inadmissibility

The Applicant has been found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, specifically, for misrepresenting his immigration status and filing altered documents with his Form I-539 application. The Applicant asserts that he is not inadmissible because he did not willfully misrepresent material facts to USCIS; an attorney did so without his knowledge.

For a misrepresentation to be willful, it must be determined that the applicant was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-,* 7 I&N Dec. 161 (BIA 1956). To be willful, a misrepresentation must be made with knowledge of its falsity. 7 I&N Dec. at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we "closely scrutinize the factual basis" of a finding of inadmissibility for fraud or misrepresentation because such a finding "perpetually bars an alien from admission." *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994); *Matter of Tijam,* 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979).

The Form I-539 application requires applicants to indicate the date of their last arrival into the United States. The Applicant's most recent Form I-539 application lists November 9, 2005, as his last arrival date. The Form I-539 instructions require applicants to submit supporting documentation, including copies of their Form I-94, Departure Record. An altered Form I-94 was submitted with the application, showing that the Applicant last entered the United States on November 9, 2005, when his date of last entry was 2 years earlier, November 9, 2003. An altered Form I-797A Approval Notice, showing that the Applicant was in valid status as of the date of filing the Form I-539, was submitted to USCIS. The Applicant asserts that this Form I-539 application was prepared and filed by attorney without his knowledge.

In a declaration he submits on appeal, the Applicant states that he was unaware that he misrepresented any facts to USCIS and did not do so. He stated, in a sworn statement prepared by the USCIS Baltimore Field Office in 2011, that he twice hired a California attorney named to request an extension of status. He states, in his declaration submitted on appeal, that he also spoke on the phone with an employee of attorney regarding an H1B visa petition and that he sent copies of his documents to her, but he "had no idea [she] would file false information" and

forge documents on his behalf. He further states that he never knew was acting as his attorney and his signature on her Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, in addition to his signature on other documents, was forged.

The Applicant asserts that he did not sign the Form I-539 in question. The Applicant does not provide corroborative evidence to support his assertion that he did not sign or authorize the Form I-539. Although the Applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.").

Evidence in the record shows that attorney was found guilty of conspiracy to commit visa fraud and 10 counts of visa fraud in 2014. The Applicant, however, has not shown that he was not involved in any way in the preparation of his applications. The Applicant has the burden of establishing that he is admissible. He has not met that burden, and as a result, he has not shown that his misrepresentation of his status was not willful.

The Applicant asserts that the government has not met its burden of finding him inadmissible for fraud. In making a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act, 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. 8 USCIS Policy Manual J.3(A)(1), https://www.uscis.gov/policymanual/html/PolicyManual-Volume8-PartJ-Chapter3.html. Here, the record contains sufficient evidence that the Applicant willfully misrepresented material facts concerning his immigration status and date of last entry in an attempt to obtain an extension of status. The Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

B. Hardship

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 U.S. citizen spouse. The Applicant does not indicate whether his spouse intends to remain in the United States or relocate with him to Israel 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 psychological evaluation of his spouse and statements from his parents-in-law and himself. On appeal, the Applicant submits copies of his Form I-94 cards, medical reports pertaining to his father-in-law, his own declaration, his spouse's declaration, and a brief.

We will first address hardship if the Applicant's spouse remains in the United States without him. The Applicant asserts that she will suffer physical, emotional, psychological, and financial hardship.

Regarding physical and psychological hardship, the Applicant's spouse states that she cannot imagine life without the Applicant. She states that she relies heavily upon him for everything from taking care of their two young children[1] to taking care of household needs. She asserts that if the Applicant is removed, she would not be able to take care of their children and work.

The Applicant's spouse asserts that she will suffer emotionally if separated from the Applicant. She states that their lives are "interdependent and intertwined." To corroborate his spouse's statements concerning hardship, the Applicant submitted a report from a psychologist, indicating that the Applicant's spouse has been diagnosed with adjustment disorder with mixed anxiety and depressed mood, characterized by symptoms of lack of energy, difficulty sleeping and concentrating, sadness, fearfulness, bad dreams, and continuous disruptive worrying. The psychologist opined that the removal of the Applicant from the United States would cause extreme emotional hardship to his spouse and their older daughter.

Concerning hardship that the Applicant's children may experience, the Applicant's spouse states that the Applicant is emotionally close to their children and that separation from the Applicant would be devastating to them. She states that if their children had to grow up without the Applicant, they would experience fear and anxiety that would interfere with their emotional, social, and educational behavior and create a sense of instability and emotional distress. The Applicant states that if his children grow up without a father, they will be at a heighted risk of emotional and psychological problems. In support of his assertion, the Applicant cites an article, which discusses an American study that found that adolescents in single-parent homes are more than twice as likely to have serious emotional and behavioral problems. Hardship to the Applicant or the Applicant's children will not be separately considered, except as it is shown to affect the Applicant's spouse. We acknowledge that hardship to their young children is likely to cause emotional hardship to the Applicant's spouse.

While we acknowledge that the Applicant's spouse would face emotional difficulties as a result of their separation, we do not find the record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. The record, moreover, lacks evidence showing that the Applicant's spouse would experience financial or other types of hardship, to be considered with the evidence of emotional hardship, in the event she remains in the United States and he is removed. In that the Applicant has not provided sufficient evidence to establish that the effects of separation on his spouse are cumulatively above and beyond the hardships commonly experienced, we cannot conclude that she would suffer extreme hardship if the waiver application is denied and the Applicant returns to Israel without her.

[1] The record does not include evidence establishing the Applicant's relationship to his children.

We will next address hardship if the Applicant's spouse relocates with him to Israel. The Applicant asserts that if his spouse relocates with him to Israel, she will suffer emotional, psychological, and financial hardship.

As to emotional and psychological hardship, the Applicant's spouse expresses concern about separation from her parents and grandparents, who live in the United States, should she relocate. She states that she is especially concerned because her aged ailing father, currently in Philadelphia, is planning to move closer to her so she can help him, particularly if and when he has surgery to remove a pituitary adenoma. To corroborate claims that his 64-year old father-in-law is ill, the Applicant submits medical records indicating that as of 2015, his father-in-law had, among his medical conditions, psoriasis, plantar fasciitis, pituitary adenoma, colonic polyps, dermatitis, gastroesophageal reflux disease, congenital deficiency of clotting factors, iatrogenic pulmonary embolism and infarction, vitamin D deficiency, hyperlipidemia, systolic murmur, and benign essential hypertension. The Applicant also submits his father-in-law's 2012 medical records indicating that he was admitted to a hospital with pulmonary emboli and was diagnosed with hypertension and pulmonary embolus. The records show that after being discharged he was instructed to follow up for monitoring of the effects of a blood thinner. However, the Applicant provides no evidence to support his assertion on appeal that his father-in-law has a debilitating heart condition. The Applicant's spouse asserts that she needs to help her father by providing emotional support and by communicating on his behalf with his doctors. She asserts that, given her profession and her familiarity with the medical system, she is uniquely capable of assisting her father in accessing medical care and that it is "absolutely necessary" for her to remain close to him, in case his condition deteriorates.

The Applicant's spouse also states that she is anxious and afraid of suicide bombings in Israel and the "constant threat" of attacks. She asserts that every building in Israel has bomb shelters and is guarded by armed security personnel. She is concerned about scarring their children if she should need to explain the reason extensive security is needed in Israel.

As to financial hardship, the Applicant's spouse states that she had a large student loan debt. On appeal, the Applicant provides no information to show that this debt still exists. The Applicant's spouse also expresses concern about her ability to find employment in Israel because she is not fluent in Hebrew. She states she is happy with her employment as a physician's assistant and is reluctant to leave her current position. According to her psychologist, the Applicant's spouse believes that there are no physician's assistants in Israel, only medical doctors and nurses, and after working so hard to attain her position, "to just leave it would be terrible" for the Applicant's spouse. However, the Applicant does not respond to the Director's finding that at least one news source has acknowledged Israel's recognition of physician's assistants as a medical occupation. The record includes no other evidence addressing his spouse's ability to find suitable employment were they to relocate to Israel together. The Applicant does not address his ability to find employment and financially support his family in Israel.

The Applicant's contention that his spouse would experience extreme hardship upon relocation to Israel is not supported by sufficient evidence. The Applicant has not submitted evidence relating to

his or his spouse's prospective income and expenses. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). He also has not shown that his spouse is limited to employment as a physician's assistant or that she would have difficulty finding employment in Israel. The Applicant's spouse's father's medical records, moreover, do not indicate that he requires surgery or that he is unable to manage his medical conditions without the Applicant's spouse's assistance.

Relocation would entail hardship related to the Applicant's spouse's separation from family members who live in the United States as well as other difficulties. The Applicant's spouse was born in Russia and is not fluent in Hebrew. She has lived in this country since 1991. However, the evidence does not establish that his spouse's difficulties would rise above the hardship commonly resulting when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, psychological, and financial impacts of relocation on the Applicant's spouse are in the aggregate above and beyond the hardships normally experienced, we cannot conclude that she would experience extreme hardship if the waiver application is denied and the Applicant's spouse relocates to Israel.

As the Applicant has not demonstrated extreme hardship to a qualifying relative or qualifying relatives, we need not consider whether the Applicant warrants a waiver in the exercise of discretion.

IV. 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 evidence is insufficient to establish that the Applicant's spouse will suffer extreme hardship if the application is denied.

ORDER: The appeal is dismissed.

Cite as *Matter of B-O-N-*, ID# 17225 (AAO Sept. 12, 2016)