U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-J-V-F-

DATE: DEC. 27, 2018

APPEAL OF NEWARK, NEW JERSEY FIELD OFFICE DECISION

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

The Applicant, a citizen of Peru currently residing in the United States, has applied to adjust status to that of a lawful permanent resident. A foreign national seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud/misrepresentation and seeks a waiver of that inadmissibility. Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Newark, New Jersey Field Office denied the waiver application, concluding that the record did not establish, as required, that the Applicant's qualifying relative would experience extreme hardship if the waiver is denied.

On appeal, the Applicant asserts that the Director erred by not giving sufficient weight to the evidence of hardship contained in the record.

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

I. LAW

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 is inadmissible. Section 212(a)(6)(C)(i) of the Act.

There is 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. If the foreign national demonstrates the existence of the required hardship, then he or she must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in

most cases; however, to be considered "extreme," the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were the "common result of deportation" and did not alone constitute extreme hardship). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

II. ANALYSIS

The issues on appeal are whether the Applicant's spouse would experience extreme hardship if the waiver is denied and if so, whether the Applicant merits a favorable exercise of discretion. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record, which establishes that he entered the United States in 2001 with a fraudulent passport. The Applicant does not submit any new documentary evidence for us to consider on appeal. Instead, he submits a statement claiming that the Director did not consider or give sufficient weight to the financial hardship the Applicant's spouse would experience without the Applicant's income, the hardships that the Applicant's spouse would experience upon relocation, and the psychological hardship the Applicant's spouse would experience if the waiver is denied.

We have considered all the evidence in the record and conclude that it does not establish that the claimed hardships rise to the level of extreme hardship when considered both individually and cumulatively. Because there is no showing of extreme hardship, we will not address whether the Applicant merits a waiver as a matter of discretion.

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 U.S. citizen spouse. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant and 2) if the qualifying relative relocates overseas with the applicant. Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. The applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. 9 USCIS Policy Manual B 4(B), https://www.uscis.gov/policymanual. In the present case, the record contains no statement from the Applicant's spouse indicating whether she intends to remain in the United States or relocate to Peru if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his qualifying relative would experience extreme hardship both upon separation and relocation.

The record reflects that the Applicant and his spouse were married in 2015. The Applicant's spouse asserts that if separated from the Applicant, she would be unable to afford her living expenses. She also states that the Applicant's immigration difficulties have caused her to experience depression and

anxiety. The Applicant's spouse was evaluated by a licensed mental health counselor in order to assess the impact that a separation would have on her.

We find that the submitted documentation is insufficient to corroborate the claim of financial hardship. According to the July 2016 psychological evaluation, the Applicant's spouse indicated that she works and also attends a local community college, where she is pursuing a degree in accounting, and therefore relies upon the Applicant's financial support. In her November 2016 statement, however, the Applicant's spouse does not claim to be attending college but instead states that she dreams of returning to college. The record contains no further corroboration that the Applicant's spouse was attending college in 2016 as stated in the evaluation. The record contains tax documentation indicating that from 2015 to 2017, the Applicant's spouse's had an annual income ranging from $22,400 to approximately $26,000 and that the Applicant's annual income was between $24,500 and $33,500. Although the record, which includes a list of some of the couple's expenses, demonstrates that the Applicant's spouse may have to lower her standard of living due to the loss of the Applicant's income, the record does not demonstrate that she relies on the Applicant's income and would be unable to afford her living expenses in his absence. *See Matter of Pilch*, *supra* at 631 (BIA 1996) (finding that the inability to maintain one's present standard of living does not ordinarily amount to extreme hardship). Further, the record indicates that the Applicant and his spouse reside in the same home as her mother and her stepfather. There is no indication that they would be unwilling or unable to provide her with financial assistance if needed.

The Applicant's spouse claims to be experiencing emotional hardship as a result of the Applicant's immigration situation, and during her psychological evaluation, she expressed that she was experiencing symptoms including insomnia, lack of appetite, and anxiety. The counselor concluded that the Applicant's spouse meets the criteria for a diagnosis of unspecified anxiety disorder with mixed anxiety and depressed mood. We acknowledge the Applicant's spouse's statements and the statements in the psychological evaluation regarding the difficulties that separation from the Applicant would cause her, but the record does not establish the severity of the emotional hardship or the effects on her daily life or that her situation is unique or atypical compared to others separated from a spouse. Based on the record, we cannot conclude that, when considered in the aggregate, any financial and emotional hardships the Applicant's spouse would experience upon separation from the Applicant would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship.

The Applicant claims that his spouse would experience extreme hardship if she relocated to Peru, her country of birth, because she has resided in the United States since she was a child and her parents and siblings no longer reside in Peru. However, as stated above, the record does not contain any statement or evidence that his spouse would relocate with him to Peru if he is denied admission, and we therefore cannot conclude that such hardship would actually result from denial of his waiver application.

The Applicant must establish that denial of the waiver application would result in extreme hardship to a qualifying relative both upon separation and relocation. As the Applicant has not established

extreme hardship to his spouse in the event of separation, we cannot conclude he has met this requirement. As such, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion. Accordingly, the waiver application remains denied.

ORDER: The appeal is dismissed.

Cite as *Matter of E-J-V-F-*, ID# 1962214 (AAO Dec. 27, 2018)