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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-L-R-M-

DATE: OCT. 22, 2015

APPEAL OF RHODE ISLAND FIELD OFFICE DECISION

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

The Applicant, a native and citizen of the Dominican Republic, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i); and § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). The Field Office Director, Johnston, Rhode Island, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On January 22, 2015, the Director determined that the Applicant was inadmissible for seeking admission into the United States by fraud or willful misrepresentation, and for having been unlawfully present in the United States for more than one year. The Director further found that the Applicant had not established that refusal of admission would result in extreme hardship to his U.S. citizen spouse.

On appeal, the Applicant asserts that the Director made an erroneous conclusion of law, and that the Applicant has demonstrated his rehabilitation.

The record contains, in addition to the Applicant's letter on appeal, two letters from the United States Embassy, [redacted] Dominican Republic, Consular Section; an affidavit from the Applicant's spouse; a letter from a licensed mental health counselor; and medical records. The entire record was reviewed and considered in rendering a decision on the appeal.

The Director found also that the Applicant was inadmissible for seeking admission into the United States by fraud or willful misrepresentation. Section 212(a)(6)(C)(i) of the Act states:

> 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.

Section 212(i) of the Act further provides:

> (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of 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 to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

On May 23, 2013, the Applicant signed a statement at the United States Embassy, Dominican Republic, Consular Section stating that in 2004 he gained admission to the United States using a fake passport, and that his father paid $8,000 for his travel arrangements. Accordingly, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States by misrepresenting his identify and eligibility for admission.

The Director also found the Applicant was inadmissible under section 212(a)(9)(B) of the Act for unlawful presence. Inadmissibility for unlawful presence is found under section 212(a)(9)(B) of the Act. That section provides, in part:

> (B) Aliens Unlawfully Present
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> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> > > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or
> >
> > > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .

The waiver for unlawful presence is found under section 212(a)(9)(B)(v) of the Act. That section provides that:

> (v) Waiver. – The Attorney General [now Secretary, Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The Director determined that the Applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act. In 2004, the Applicant gained admission to the United States using a fake passport. The Applicant began to accrue unlawful presence since his 2004 until his departure from the United States in 2012. The Applicant accrued more than one year of unlawful presence and his departure triggered the ten-year bar under section 212(a)(9)(B)(i)(II) of the Act.

The waivers under section 212(a)(9)(B)(v) and 212(i) of the Act are dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996). The record contains references to hardship the Applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to a foreign national's child as a factor to be considered in assessing extreme hardship under sections 212(a)(9)(B)(v) and 212(i) of the Act. In the present case, the Applicant's spouse is the only qualifying relative for the waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act, and hardship to the Applicant's children will not be separately considered, except as it may affect the Applicant's spouse. In this case, the Applicant's only qualifying relative is his U.S. citizen spouse.

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Reg'l Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, *et cetera*, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives 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 they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In her affidavit, the Applicant's spouse asserted that separation from the Applicant would be very straining on her mental state and she would be isolated and alone. She indicated that she is worried about the impact of separation on her children. The Applicant provided a letter from a licensed mental health counselor, which indicates that the Applicant's spouse has received individual outpatient therapy since August 31, 2011, to stabilize her mood and deal with family stressors. Although this qualifies as evidence of emotional hardship to his spouse, the Applicant has not demonstrated that his spouse's hardship, as a result of remaining in the United States without him, is unusual or beyond that which is normally to be expected upon an applicant's bar to admission to the United States.

The Applicant's spouse claimed medical and educational hardship if she relocated to the Dominican Republic. The Applicant's spouse declared that she wants her children to have the best education possible, which would not be available in the Dominican Republic. She claimed that she and her children have excellent medical care in the United States and would not have comparable medical care in the Dominican Republic. The Applicant provided a letter dated January 20, 2014, from a licensed practical nurse stating that his child had a bilateral ureteral re-implant on July 31, 2013. Although the Applicant's spouse claims that the quality of medical care would be significantly lower than in the United States, the Applicant has not provided any documents to support her claim. Nor has the Applicant provided documentation to show that the educational system in the Dominican Republic would be inadequate for his children. Furthermore, as previously stated, hardship to the

Applicant's children will not be separately considered, except as it may affect the Applicant's spouse.

On appeal, the Applicant asserts that the Director made an erroneous conclusion of law but does not explain the error made by the Director. The Applicant states that he attends church, has accepted his mistakes, and is remorseful for having violated U.S. immigration laws, but his statement does not describe any hardship to his spouse.

The Applicant is inadmissible under section 212(a)(6)(C)(i) for seeking admission into the United States by fraud or willful misrepresentation and under section 212(a)(9)(B)(i)(II) for unlawful presence. The Applicant has not established that refusal of admission to the United States would result in extreme hardship to his U.S. citizen spouse. As the Applicant has not demonstrated that a qualifying relative will experience extreme hardship, we will not determine whether the Applicant merits a favorable exercise of discretion.

In proceedings for a waiver of grounds of inadmissibility under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act, the burden of proving eligibility remains entirely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of J-L-R-M-*, ID# 14048 (AAO Oct. 22, 2015)