U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-G-L-

DATE: SEPT. 4, 2015

MOTION OF THE ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of South Korea, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) and § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Hagatna, Guam, denied the application. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before us on a motion. The motion is denied.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking admission within ten years of his last departure from the United States. He was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation. The Applicant is married to a U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his family.

In a decision dated January 28, 2009, the Field Office Director found that the Applicant did not establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly.

On appeal, we determined in a January 10, 2012 decision that the Applicant did not demonstrate that his qualifying relative would experience extreme hardship should she remain in the United States without him. As such, we denied the application.

On motion, the Applicant asserts that the ten year bar no longer applies to the Applicant under section 212(a)(9)(B)(i)(II) of the Act. The Applicant also states that we discounted the documentation regarding the spouse's mental issues, finding there was not a permanent problem. The applicant provided additional evidence regarding the spouse's emotional hardship upon separation on motion.

In addition to evidence already considered on appeal, the Applicant provides a letter from his attorney, psychological documentation, a copy of a Board of Immigration Appeals case, and two letters from USCIS regarding inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9) of the Act provides:

> (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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> . . .
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> (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.
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> (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.
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> . . .
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> (v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record indicates that the Applicant was admitted into the United States as a visitor for pleasure until September 6, 1997, and he remained in the United States until October 19, 1998 when he voluntarily departed. The Applicant thus accrued unlawful presence from when his period of authorized stay expired on September 6, 1997 until October 19, 1998, a period in excess of one year. He was readmitted on April 29, 1999 as a non-immigrant visitor for pleasure. Pursuant to section 212(a)(9)(B)(i)(I), the Applicant was barred from again seeking admission within ten years of the date of his departure. As the Applicant's last departure occurred on October 19, 1998, it has now been more than ten years since the departure that made the inadmissibility issue arise. A clear reading of the law reveals that the Applicant is no longer inadmissible under 212(a)(9)(B).

We conduct appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Although the Applicant is no longer inadmissible under section 212(a)(9)(B)(i)(I), we again affirm the Applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a benefit under the Act through fraud or misrepresentation.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) 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 provides that:

> (1) The Attorney General [now Secretary of the Department of Homeland Security (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.

The Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for applying for a new visa and passport with an altered name, in order to conceal the previous overstay. In addition, USCIS records reflect that the Applicant has admitted to this misrepresentation, and the Applicant has not disputed his inadmissibility. Therefore, as a result of the Applicant's prior misrepresentation, he is still inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the Applicant. Hardship to the Applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The Applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

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 generally 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 (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 our January 10, 2012 decision, we previously found that, when considered in the aggregate, the evidence of record established that the Applicant's spouse would experience extreme hardship if she were to relocate to South Korea. As previously stated, the record establishes that the Applicant's U.S. citizen spouse has resided in the United States for over ten years and has significant family ties to the United States including her mother and children. The record also reflects that the spouse helps her mother at her restaurant and also assists her financially to pay for her medical debts and also has

other financial obligations that would result in a hardship to her upon relocation. Moreover, the qualifying spouse established that she would have to renounce her U.S. citizenship and potentially pay fines in order to work in South Korea. As such, it has been established that the Applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the Applicant due to his inadmissibility.

We also concluded previously, however, that the Applicant did not establish that the spouse would suffer extreme hardship as a consequence of being separated from him. Specifically, the Applicant did not provide sufficient evidence on appeal to illustrate how the spouse's emotional hardships upon separation are outside the ordinary consequences of removal or to demonstrate how she would be financially impacted by his departure.

In the instant motion, the Applicant asserts that we discounted the spouse's documentation regarding her mental issues by finding there was not a permanent problem. The Applicant also indicates that his spouse's mental problems continue and have "gotten worse." In support, the Applicant submits a letter from the spouse's psychologist and an updated assessment report following the letter. The report is based upon two sessions with the psychologist and indicates that the spouse is experiencing anxiety, depression and suicidal ideation, and has been coping with her problems by drinking alcohol. The report concludes that the psychologist has recommended a course of treatment including, but not limited to, a referral to see a physician, resulting in her being placed on anti-anxiety medication, to undergo psychotherapy, to improve her sleep hygiene and to stop drinking. The report indicates that treatment will likely be successful in six months if the Applicant is able to remain with his family, but that it will not have the same beneficial effects if the Applicant must leave Guam. Neither the letter nor the report, diagnose the Applicant's spouse specifically with a mental condition nor do they indicate the extent of her drinking. In our prior decision, we noted that the letter from the psychologist indicated that the spouse's "tentative or Provisional diagnoses are Generalized Anxiety Disorder (Provisional) and Major Depressive Disorder (Provisional)" but also states that the spouse was "only observed on one day and there exist no other informants related to her behavior or health concerns." However, even with the additional two sessions of treatment indicated in the updated documentation, there was no clear diagnosis or any indication in the record that the spouse was planning on following the course of treatment set out by her psychologist, other than her obtaining anti-anxiety medication. Moreover, as we stated in our previous decision, the record reflects that the Applicant's spouse is suffering emotionally due to the immigration issues of the Applicant. However, the record does not contain sufficient documentation to establish the extent of her emotional and psychological hardships.

The Applicant's motion does not address the financial hardships that were asserted on appeal, or provide any further documentation to support the previous assertions that the spouse would experience financial hardships upon separation. The Applicant previously indicated that the spouse will suffer financially because she will be unable to visit her husband in South Korea, and the spouse stated that she will be unable to continue to work two jobs without the Applicant's assistance with child care. We noted that there was no documentation regarding the expenses of the spouse, other than the children's school tuition, or details regarding the child care provided by the Applicant. Moreover, we found that the cost of travel does not represent a hardship beyond one that would normally be expected as a consequence of separation.

Although we reconsidered, on motion, the spouse's psychological and financial hardships upon separation, we find that the record lacked sufficient documentation concerning the severity of her psychological hardships. On motion, the Applicant also submits no financial documentation to address the deficiencies cited in our previous decision.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has not established extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion is denied.

Cite as *Matter of C-G-L-*, ID# 12136 (AAO Sept. 4, 2015)