U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-G-M-G-

DATE: APR. 25, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of Honduras, seeks a waiver of inadmissibility for unlawful presence. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). A foreign national seeking to be admitted to the United States as an immigrant or to adjust to lawful permanent resident (LPR) status 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 Director, Nebraska Service Center, denied the application. The Director concluded that as the Applicant was also inadmissible pursuant to section 212(a)(6)(B) of the Act until December 6, 2015, for failure to appear at her removal proceedings, the Form I-601 should be denied as a matter of discretion.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in not finding that she is eligible for a waiver based on extreme hardship to her U.S. citizen spouse.

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

I. LAW

The Applicant is seeking admission as an immigrant and has been found inadmissible for unlawful presence, specifically, having entered the United States without inspection on August 21, 2000, and remained until December 6, 2010. Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), provides, in pertinent parts:

> (i) In General
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> Any alien (other than an alien lawfully admitted for permanent residence) who—

> (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 (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or
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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.

(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.

Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion for

> 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 . . . 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.

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 he remained in the United States without her or relocated to Honduras. The Applicant does not contest the finding of inadmissibility for unlawful presence, a determination supported by the record.[1]

The evidence in the record, considered both individually and cumulatively, does not establish that the Applicant's spouse would experience extreme hardship. The record does not contain sufficient evidence to establish much of the hardship claimed, and for the hardship demonstrated, the record does not show that it rises above the common consequences of removal or refusal of admission to the level of extreme hardship. Because the Applicant has not established extreme hardship to a qualifying relative, we will not address whether the Applicant merits a waiver as a matter of discretion.

A. Waiver

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The Applicant maintains that her U.S. citizen spouse will experience extreme hardship were she unable to reside in the United States as a result of her inadmissibility. The record contains biographic documents pertaining to the Applicant, her spouse, and her U.S. citizen child, born on [redacted] statements from the Applicant; evidence of the Applicant's family ties in the United States, including the presence of siblings and adult children; immigration court records; and a travel warning issued by the U.S. Department of State regarding Honduras. We note that the Applicant's spouse has not submitted any statements outlining what hardships, if any, he will experience were the Applicant unable to reside in the United States due to her inadmissibility.

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[1] As we referenced above, the Director noted in the decision to deny the Applicant's Form I-601 that in addition to being inadmissible for unlawful presence, the Applicant was also inadmissible for a period of five years pursuant to section 212(a)(6)(B) of the Act, for failure to appear for her removal proceedings. The Director went on to state that as the Applicant had departed the United States on December 6, 2010, inadmissibility pursuant to section 212(a)(6)(B) of the Act would remain in effect until December 6, 2015, five years from the Applicant's last departure from the United States. As of today, the record establishes that the Applicant's inadmissibility under section 212(a)(6)(B) is no longer in effect, as five years have elapsed since her last departure from the United States.

The Applicant claims that her spouse will experience financial and emotional hardship were he to remain in the United States while she continues to reside abroad as a result of her inadmissibility. As to financial hardship, the Applicant maintains that her spouse is retired and living on a fixed income and needs her financial contributions to support their child. The Applicant has not submitted any financial documentation to establish her and her husband's current income, expenses, assets, and liabilities, to support her contention that her spouse will experience financial hardship were she to remain abroad. Nor has the Applicant established that she is unable to work in Honduras and assist her husband financially should the need arise. The Applicant has also not established what specific financial contributions she made to the household prior to departing the United States.

As to the emotional hardship referenced, although the Applicant states that her husband has been impacted emotionally and psychologically as a result of her inadmissibility, the record does not contain any documentation in support of that claim. While we acknowledge the Applicant's contention that her husband is experiencing emotional hardship as a result of separation from her, the record does not establish the severity of this hardship or the effects on his daily life.

Therefore, with respect to separation, the record contains insufficient evidence to establish the hardships claimed rise to the level of extreme hardship when considered both individually and cumulatively. As stated above, the evidence of financial and emotional hardship consists solely of a statement from the Applicant, without additional details or supporting documentation. Therefore, we determine that the record does not support a finding of extreme hardship if the Applicant's spouse remains in the United States.

Concerning relocation, the Applicant does not address what, if any, hardships her spouse will experience were he to relocate to Honduras. While the Applicant references the problematic country conditions in Honduras, including the high murder rate, other violent crimes, substandard health care system, and mosquito-borne illnesses, the Applicant only references the impact of these conditions, in general terms, as they may pertain to her son. We note that the Applicant's son has been residing with her in Honduras, and the Applicant maintains that her son will return to the United States so that he may start school in the United States. No reference is made to what specific hardships the Applicant's child may have experienced in Honduras. Further, the Applicant's son is not a qualifying relative for purposes of a waiver of inadmissibility for unlawful presence. The Applicant does not address what hardships her spouse will experience specifically in Honduras. Moreover, as previously noted, the Applicant's spouse has not submitted any statement detailing the hardships he would experience in Honduras. The Applicant has thus not established that her spouse would experience extreme hardship in Honduras.

Therefore, the record does not establish that refusal of admission would result in extreme hardship to the Applicant's spouse either if he remained in the United States or relocated to Honduras.

C. Discretion

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.

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 not met that burden. The Applicant has not demonstrated that her spouse would experience extreme hardship. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of A-G-M-G-*, ID# 16048 (AAO Apr. 25, 2016)