U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-F-P-D-C-

DATE: MAR. 8, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Guatemala, 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). The Director, Nebraska Service Center, denied the application, and our office dismissed the subsequent appeal. The matter is now before us on a motion to reopen and a motion to reconsider. The motion will be denied.

In a decision dated August 16, 2014, the Director determined that the Applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act; 8 U.S.C. § 1182(a)(9)(B)(i)(II) for accruing unlawful presence in the United States of one year or more and seeking admission within 10 years of his last departure. The Director further determined that the Applicant had not established that refusal of admission would result in extreme hardship to a qualifying relative. In our decision dated July 13, 2015, we concurred with the Director's determination that the Applicant was inadmissible for unlawful presence in the United States for one year or more and that the Applicant had not established that refusal of admission would result in extreme hardship to a qualifying relative. The matter is before this office on a motion to reopen and reconsider. In support of the motion, the Applicant submits a letter from himself, a letter from his spouse, and evidence of crime in Guatemala. The entire record was reviewed and considered in rendering this decision.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Section 212(a)(9) of the Act provides in pertinent part:

> B) Aliens Unlawfully Present.-
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> (i) In general. - 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…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.
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> . . . .
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> (v) Waiver. – The Attorney General [now the Secretary of 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 record reflects that the Applicant entered the United States without inspection in January 2005 and departed the United States in June 2013. The Applicant accrued unlawful presence from [redacted] 2007, the date he turned 18 years old, until June 2013, the date he departed the United States. The Applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking readmission within ten years of his June 2013 departure from the United States. The Applicant does not contest this ground of inadmissibility.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. In this case, the qualifying relative is the Applicant's spouse. 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).

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), but hardship "need not be unique to be extreme." *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996). 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); *see also Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship); *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).

Regarding hardships on relocation to Guatemala, the Applicant's spouse stated on appeal that she was born in the United States; her family is close and lives in California; she would be isolated with no friends or family; she would not have a doctor in Guatemala who knows her and the Applicant's daughter's medical history; their daughter will receive better healthcare in the United States; their daughter has a sensitive immune system and their daughter's physician believes it would be best for her to remain in the United States; education in the United States is superior and more realistic to obtain than in Guatemala; their daughter may have to quit school at an early age to help the family financially; they would not have a nice house and reliable vehicles; and they could never retire in Guatemala. The Applicant's spouse stated that Guatemala has issues with violence and there are many criminals there.

As to the hardships on remaining in the United States without the Applicant, the Applicant's spouse stated on appeal that she lives with her mother because that is her only option financially; she struggles with bills, paying debts and daycare expenses; she sometimes works 12-hour shifts; while the Applicant worked in the United States, he could support them; she sends money to the Applicant when she can; internet, phone and travel costs are high; and she and their daughter never see him because it is too expensive.

The Applicant's spouse also stated that their daughter will be without a father; their daughter asks for the Applicant every night; her family loves each other; she previously tried going to school; she would be able to attend school and watch their daughter if the Applicant was present; she is constantly thinking about the possibility of the Applicant's death due to violence in Guatemala; she is always stressed, is unable to sleep, has a facial twitch and grinds her teeth from anxiety; she takes their daughter for medical and dental appointments; and she does not have time to take care of her own health. The Applicant's spouse describes having anxiety attacks, panic attacks, insomnia, high blood pressure and severe depression; and her medical conditions are worsening without the Applicant. The record includes letters from friends addressing the Applicant's good character and his love for his daughter.

On motion, the Applicant's spouse asserts that she has been together with the Applicant since high school; she works six days a week and struggles financially and emotionally to raise their child; she was in a car accident and needs a car; and she does not want to expose her daughter to the dangers in Guatemala. The Applicant declares that his spouse was in a car accident; his spouse has ongoing stress and needs his financial and emotional support; the violence in Guatemala has increased; he has employment in Guatemala but his income is not enough to support himself; and his spouse and child

should not relocate to Guatemala because medical care and education in Guatemala are not comparable to the United States. The Applicant has submitted evidence of crime in Guatemala, mainly in the form of pictures of people apparently being arrested.

In regard to separation, the Applicant has not provided supporting documentary evidence which corroborates his spouse's claims about her medical conditions, expenses, income, income that the Applicant received while in the United States, her prior school attendance, her auto accident, or other hardships his spouse may be experiencing in his absence. The evidence of crime in Guatemala is not enough to demonstrate that the Applicant is at risk in Guatemala, and it is not clear if he is in an unsafe part of the country. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the Applicant's spouse would experience extreme hardship upon remaining in the United States.

As to relocation to Guatemala, the record does not include supporting documentary evidence of the Applicant's spouse's medical conditions or their daughter's medical issue, their daughter's legal status, the Applicant's spouse's family members in the United States, and the lack of educational opportunity and suitable medical care in Guatemala. The evidence of crime in Guatemala is not enough to demonstrate that the Applicant's spouse would be at risk in Guatemala, and it is not clear if she would relocate to an unsafe part of the country. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). In this case, there is insufficient documentary evidence of emotional, financial, medical, or other types of hardship that, when considered in their totality, establish that the Applicant's spouse would experience extreme hardship upon relocation to Guatemala.

On motion, the Applicant has not demonstrated that refusal of admission would result in extreme hardship to his spouse. Accordingly, no purpose would be served in discussing whether the Applicant merits a waiver as a matter of discretion.

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. Accordingly, we deny the motion.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of E-F-P-D-C-*, ID# 15844 (AAO Mar. 8, 2016)