U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-A-M-

DATE: MAR. 8, 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 Mexico, 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. The matter is now before us on appeal. The appeal will be sustained.

In a decision dated June 12, 2015, the Director found the Applicant inadmissible under section 212(a)(9)(B) of the Act for having been unlawfully present in the United States for a period of one year or more and seeking admission within ten years of his last departure from the United States. The Director then found that the Applicant had not established that his U.S. citizen spouse would suffer hardship rising to the level of extreme hardship. He specifically found that the record did not include sufficient evidence of the claimed financial, emotional, or medical hardships. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

On appeal, the Applicant submits an updated statement from his spouse and additional evidence of hardship. The record includes, but is not limited to: a statement from the Applicant; two statements from the Applicant's spouse; medical documentation for the Applicant's spouse; numerous letters from friends, coworkers, and family members; a letter from the Applicant's spouse's employer; court documentation pertaining to the Applicant's spouse's son; news articles regarding conditions in Mexico which are in Spanish and not translated[1]; a psychological evaluation; and financial documentation. The entire record, other than the Spanish documents which were not translated, were reviewed and considered in reaching this decision.

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

(B) Aliens Unlawfully Present

[1] As the Applicant failed to submit certified translations of the documents in Spanish, we cannot determine whether the evidence supports the Applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

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

The Applicant entered the United States without inspection in 2000 and departed the United States in October 2014. He accrued unlawful presence during this entire period of time. Thus, the Applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for one year or more and seeking admission within ten years of his departure.

Section 212(a)(9)(B)(v) of the Act states:

> (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 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 his U.S. citizen 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).

We find that the record establishes that the Applicant's spouse will suffer extreme hardship as a result of his inadmissibility. The record indicates that the Applicant's spouse will suffer extreme hardship as a result of relocation to Mexico. The psychologist who evaluated the Applicant's spouse states that the Applicant's spouse was born in Mexico, but came to the United States when she was years old; her parents are lawful permanent residents; and most of her siblings live in the United States. In addition, the record indicates that the Applicant's spouse has at least two U.S. citizen children and three grandchildren in the United States. The psychologist states that the Applicant's spouse's youngest child is only years old and has no relationship with his birth father; and the Applicant's spouse would like for her children to be educated in the United States. The Applicant's spouse's employer states that the Applicant's spouse has been working in housekeeping for a medical center since 2010 and earns $9.62 per hour. The psychologist states that it would be difficult for the Applicant's spouse to find employment in Mexico due to her age. The record includes evidence that the Applicant's spouse is 49-years-old.

The Applicant's spouse states that she is scared to relocate to Mexico and that the area where the Applicant is from is dangerous. The Applicant's Form G-325A, Biographic Information, reflects that the Applicant is from , Mexico. The Applicant's spouse states that the Applicant was robbed and his nephew was killed in the area. The current Department of State Travel Warning for Mexico states generally that U.S. citizens have been the victims of violent crimes, such as homicide, kidnapping, carjacking, and robbery by organized criminal groups in various Mexican states. In addition, the warning states that travelers should exercise caution in the state of and defer non-essential travel on certain roads in the area. In consideration of the Applicant's spouse's length of residence in the United States, her strong family ties to the United States, loss of educational opportunities for her children, her limited prospects for employment if she were to relocate to Mexico due to her age and time spent outside of Mexico, and safety concerns in Mexico, we find that she will suffer extreme hardship as a result of relocation to Mexico.

The Applicant's spouse states that in regards to separation, she is suffering emotional, medical, and financial hardship. The Applicant's spouse's physician assistant states that she frequently comes to her clinic for the treatment of diabetes, hyperlipidemia, and hypothyroidism; and she is taking several medications. The record establishes that the Applicant's spouse suffers from diabetes, for which she requires regular medical check-ups. The Applicant's spouse's mother and friend state that the Applicant's spouse has fainted while at work, with her mother stating this is a result of her worsening medical condition in the Applicant's absence. The record also shows that the Applicant's spouse is suffering from depression and anxiety and is in the care of a psychiatric nurse. The psychiatric mental health nurse practitioner treating the Applicant's spouse states that the Applicant's spouse's symptoms are worsening and she reports a decrease in appetite, poor sleep, a sense of impending doom, and decreased social functioning. The letter from her nurse states that the Applicant's spouse is being treated with therapy and anti-depression medication for a diagnosis of

Adjustment Disorder with Mixed Anxiety and Depressed Mood. The psychological evaluation in the record supports the statements by the Applicant's spouse's treating psychiatric nurse concerning the Applicant's spouse's emotional state. Numerous letters from family and friends also indicate that the Applicant's spouse is suffering from health issues and depression as a result of being separated from the Applicant and that her son is having behavioral problems in the absence of the Applicant. We acknowledge that the record includes a document indicating that the Applicant's spouse's son was placed on probation in juvenile court, but no further details were given.

Moreover, letters and financial documentation indicate that the Applicant's spouse is experiencing financial hardship. The Applicant's spouse states that she is working 16 hours per day; she would not have to work so many hours if the Applicant was here; she sends money to him in Mexico; and she pays for rent, utilities, car expenses, and insurance. The record includes a letter from the Applicant's spouse's sister indicating that she has been lending the Applicant's spouse money, but she can no longer help her. The record also includes a letter from the Applicant's spouse's landlord, who is also her son-in-law, indicating that she is unable to meet her rental obligations. The Applicant's spouse's employer states that she is paid $9.62 per hour. Finally, the record includes documentation to show that the Applicant's spouse has an account in debt collection, she has various bills, and she is sending money to the Applicant in Mexico. Thus, given the documentation of emotional, medical, and financial hardship suffered by the Applicant's spouse, we find that she would suffer extreme hardship upon separation from the Applicant.

We now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 299 (BIA 1996). We must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (citations omitted). In evaluating whether to favorably exercise discretion,

> the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

Id. at 301 (citations omitted). We must also consider "[t]he underlying significance of the adverse and favorable factors." *Id.* at 302. For example, we assess the "quality" of relationships to family, and "the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed]." *Id.* (citation omitted).

The negative factors in the Applicant's case include his illegal entry into the United States, his unlawful residence and employment in the United States, and his conviction in 2006 for driving under the extreme influence under Arizona Revised Statutes § 28-1382(A). The positive factors in the Applicant's case include the extreme hardship his U.S. citizen spouse would suffer if his waiver application were denied, his U.S. citizen stepchildren, his lack of a criminal record in over nine years, and, as evidenced by numerous letters in the record from family and friends, the Applicant's attributes as a hardworking, caring, and supportive person. We find that the positive factors in his case outweigh the negative such that a favorable exercise of discretion is warranted.

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 met that burden. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of B-A-M-*, ID# 15701 (AAO Mar. 8, 2016)