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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-J-V-G-

DATE: NOV. 1, 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 the grounds of inadmissibility for unlawful presence and for a crime involving moral turpitude. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(h), 8 U.S.C. § 1182(h). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to that of a lawful permanent resident (LPR) 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 noted that the Applicant was inadmissible for unlawful presence in the United States of more than one year and for having been convicted of a crime involving moral turpitude. The Director further determined that the Applicant had established extreme hardship to his qualifying relatives. Nevertheless, the Director concluded that the Applicant had committed a violent or dangerous crime, and as he had not demonstrated exceptional and extremely unusual hardship to his family if the waiver were to be denied, he did not merit a favorable exercise 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 his spouse and child would suffer exceptional and extremely unusual hardship if the waiver is denied.

Upon *de novo* review, we will sustain the appeal. The Applicant has demonstrated exceptional and extremely unusual hardship to his spouse and child. The Applicant has also established that a favorable exercise of discretion is warranted.

I. LAW

The Applicant is seeking admission as an immigrant and has been found inadmissible for unlawful presence and for having been convicted of a crime involving moral turpitude. Specifically, the record establishes that the Applicant entered the United States without authorization in 2003. On [redacted] 2008, the Applicant was convicted in the Circuit Court of [redacted] Illinois, of Attempted Criminal Sexual Abuse in violation of 720-5 Illinois Compiled Statutes 12-15(c)(2). The

Applicant was placed on probation for a two-year period and was required to register as a sex offender. On [redacted] 2013, the Applicant was ordered removed. The Applicant was subsequently removed from the United States on [redacted] 2013.

Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), provides that any foreign national convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible.

Individuals found inadmissible under section 212(a)(2)(A) of the Act may seek a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). Section 212(h) of the Act provides for a discretionary waiver if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter (Section 212(h)(1)(B).

Section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i), provides that a foreign national who 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 departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(ii) of the Act provides that a foreign national is deemed to be unlawfully present in the United States if present in the United States after the expiration of the period of authorized stay 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 if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent.

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 Applicant does not contest the finding of inadmissibility for unlawful presence and for having been convicted of a crime involving moral turpitude, or that his conviction was for a violent or dangerous crime, determinations supported by the record.[1] Since the Applicant committed a violent or dangerous crime, he must demonstrate that extraordinary circumstances warrant approval of the waiver.

On appeal we find that the Applicant has demonstrated exceptional and extremely unusual hardship to his U.S. citizen spouse and child if the waiver were to be denied. The Applicant has also established that a favorable exercise of discretion is warranted.

A. Hardship

The Director determined that the Applicant had established extreme hardship to his U.S. citizen spouse as a result of his inadmissibility. This finding is supporting by the record and will not be disturbed on appeal.

B. Discretion

We must now consider whether extraordinary circumstances exist in the Applicant's case. 8 C.F.R. § 212.7(d), which codified for purposes of section 212(h)(2) of the Act the discretionary standard first applied to section 209(c) waivers by the Attorney General in *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002), limits the favorable exercise of discretion with respect to those inadmissible under section 212(a)(2) of the Act on account of a violent or dangerous crime, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which denial of the application would result in exceptional and extremely unusual hardship.

In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the Board determined that exceptional and extremely unusual hardship "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." The Board stated that in assessing exceptional and extremely unusual hardship, the hardship factors used in determining extreme hardship should be considered and all hardship factors should be considered in the aggregate. *Id.* at 63-64.

The Applicant's spouse maintains that she and her child, born in [redacted] are experiencing exceptional and extremely unusual hardship as a result of the Applicant's inadmissibility. The Applicant's spouse

[1] The record indicates that the Applicant's conviction was the result of sexual relations with his current spouse when she was [redacted] and he was [redacted] years of age.

first explains that she and the Applicant have been together for more than a decade and long-term separation from him is causing her great hardship. She contends that she grieves every day that she is apart from him, and without his financial support, she is having difficulty making ends meet. The Applicant's spouse further maintains that her daughter is experiencing emotional problems due to long-term separation from her father. She notes that her daughter needs individual and family therapy as a result of behavioral and emotional concerns that presented themselves after her father's removal from the United States, including depressed mood, hopelessness, guilt, grief, panic towards police officers, nightmares, and frequent crying episodes.

The record contains mental health documentation establishing that the Applicant's child is receiving individual and family therapy based on her diagnosis of Mood Disorder. A letter from the Applicant's child's therapist confirms that as a result of the Applicant's removal, his child was emotionally dysregulated and her depression exhibited itself as aggression and defiance, including throwing her toys, taking scissors and cutting her own hair, not playing with other children, stealing small items from stores, and lying. The therapist also explains that as a result of the loss of the Applicant's income, his wife and child had to leave their apartment as they could no longer afford it, thereby causing additional adjustment issues for the child.

The record also contains a psychological assessment of the Applicant's spouse. The assessor, a licensed clinical social worker, explains that prior to the Applicant's departure from the United States, he provided for the family while his spouse attended college, but since his departure, his spouse had to cease her studies to obtain employment and had to break her lease, thereby damaging her credit score, as she could no longer afford to live in their apartment. The assessor confirms that the Applicant's spouse is in psychotherapy to help treat her depression, anxiety, and dependent personality disorder. Evidence of antidepressant medications prescribed to the Applicant's spouse has been submitted.

The Applicant has also submitted evidence establishing his employment prior to departing the United States. In addition, the record establishes that the Applicant's spouse has been sending money to the Applicant in Mexico as he is unable to support himself due to the problematic economy.

Finally, the record contains numerous letters of support outlining the hardships the Applicant's spouse and child are experiencing as a result of the Applicant's inadmissibility. Most notably, the Applicant's in-laws explain that the Applicant played an integral part in their daughter's and granddaughter's lives, and that as a result of his relocation abroad, their daughter and granddaughter are suffering.

Regarding relocating abroad to reside with the Applicant, the record establishes that the Applicant's spouse and child have no ties to Mexico. They were both born in the United States and have never lived anywhere outside the State of Illinois. They currently live with the Applicant's in-laws and are all very close. Furthermore, the record establishes that the Applicant's spouse and child are receiving mental health treatment and were they to relocate abroad, they would experience hardship

as a result of separation from the professionals that are familiar with their diagnosis and treatment plane. Moreover, the record contains evidence regarding the problematic country conditions in Mexico, including a substandard economy, lack of affordable and effective mental health services, and high rates of crime and violence.

The Applicant has demonstrated extraordinary circumstances, but 8 C.F.R. § 212.7(d) provides further that depending on the gravity of the underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act. We must still "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 this country." *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 300 (BIA 1996).

Here, the favorable factors are the exceptional and extremely unusual hardship to the Applicant's spouse and child if the waiver were denied; the Applicant's long-term residence and gainful employment in the United States; the passage of more than 8 years since the Applicant committed the crime rendering him inadmissible; church membership; satisfactory completion of his probation requirements; and the statements of support from his spouse, in-laws, friends, colleagues, his daughter's teachers and school social worker, church members, and extended family. The unfavorable factors are his entry to the United States without authorization, his periods of unlawful presence and employment in the United States, the nature and seriousness of the Applicant's crime, his placement in removal proceedings, and his removal from the United States.

Given the Applicant's criminal conviction, along with his immigration violations, we find that the negative factors have significant weight in this case. However, almost 8 years have passed since the conviction, the Applicant was not sentenced to imprisonment but instead received a sentence of probation, and there is no further indication in the record of criminal activity or a propensity towards violence or other criminal behavior. In addition, although the Applicant's conviction involved sexual relations with his current spouse when she was a minor, her parents have provided letters in support of the Applicant and the claim that he is rehabilitated. The record indicates that the Applicant's U.S. citizen spouse and children are experiencing hardship as a result of the Applicant's inadmissibility. The record also reflects that, notwithstanding his immigration violations, the Applicant was a contributing member of his community prior to his departure from the United States. We thus find that the Applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

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 met that burden. He has demonstrated exceptional and extremely unusual hardship to his U.S. citizen spouse and child if the waiver were to be denied. The Applicant has also established that a favorable exercise of discretion is warranted.

ORDER: The appeal is sustained.

Cite as *Matter of J-J-V-G-*, ID# 122893 (AAO Nov. 1, 2016)