U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-Y-Y-

DATE: OCT. 26, 2015

APPEAL OF NEW YORK DISTRICT OFFICE DECISION

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

The Applicant, a citizen and native of the Dominican Republic, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Acting Director of the New York District Office denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring a nonimmigrant visa and admission into the country by fraud or willful misrepresentation of a material fact. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on her behalf by her U.S. citizen spouse. She filed a Form I-601 pursuant to section 212(i) of the Act, in order to remain in the United States with her spouse.

The Director found that the Applicant had not established that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 accordingly.

On appeal the Applicant maintains that her nonimmigrant visa application response that she was married was not material to her visa eligibility and she is thus not inadmissible under section 212(a)(6)(C)(i) of the Act. In the event that she is found to be inadmissible, the Applicant asserts that the cumulative evidence in the record demonstrates that her spouse would experience extreme hardship if she is denied admission into the country. She asserts further that the evidence demonstrates that a favorable exercise of discretion is warranted in her case. In support of the instant appeal, the record includes a brief, medical documentation, and financial and employment-related evidence. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> 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 chapter is inadmissible.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation, and states:

> (1) The Attorney General [now the Secretary 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. . . .

With respect to the Director's finding of inadmissibility, the record reflects that in July 2006, the Applicant stated on her U.S. nonimmigrant visitor visa application that she was married when she was in fact unmarried. The Applicant asserts that stating that she was married does not make her inadmissible under section 212(a)(6)(C)(i) of the Act because at the time, she was in a long-term relationship that was similar to a marriage, her family ties in the Dominican Republic were those of a married individual, and the misrepresentation therefore did not affect her eligibility for a nonimmigrant visa.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

> A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The U.S. Supreme Court addressed the issue of materiality in a decision involving misrepresentations made in the context of naturalization proceedings, finding that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Kungys v. United States,* 485 U.S. 759, 771 (1988).

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

> a. an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleaure.

The U.S. Department of State Foreign Affairs Manual further provides:

> The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

DOS Foreign Affairs Manual, § 41.31 N. 3.4.

By stating that she was married when applying for a nonimmigrant visa, the Applicant led the consular officer in to believe that she had close family ties, namely, a husband, in her home country. Pursuant to the Foreign Affairs Manual, a common law marriage or cohabitation is considered to be a "valid marriage" for purposes of administering the U.S. immigration law only if it "bestows all of the same legal rights and duties possessed by partners in a lawfully contracted marriage; and [l]ocal laws recognize such cohabitation as being fully equivalent in every respect to a traditional legal marriage." *See* 9 FAM 40.1 N1.2. The Applicant has not established that her relationship with the individual referenced on her nonimmigrant visa application would be considered a marriage when she stated on her visa application that she was married. By stating she was married, the Applicant shut off a line of inquiry concerning her ties to the Dominican Republic that was relevant to her eligibility for a visitor visa. The record therefore supports the Director's determination that the Applicant procured a nonimmigrant visa and subsequent admission into the country through willful misrepresentation of a material fact and is thus inadmissible 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. The record establishes that the Applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the Applicant or her brother-in-law can be considered only insofar as it results in hardship to a qualifying relative. 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).

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 of Immigration Appeals (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 v. INS*, 138 F.3d 1292, 1293 (9th Cir.1998) (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.

We note that the record does not contain any personal statements from the Applicant or the Applicant's spouse detailing what hardships, if any, the Applicant's spouse will experience were he to remain in the United States while the Applicant relocates abroad. The only assertions are from counsel, who contends that the Applicant's spouse suffers from depression and would experience extreme emotional hardship if he is separated from the Applicant.

With respect to the emotional hardship referenced, we note that 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'l Comm'r 1972)).

As for counsel's claim that the Applicant is pregnant and that her child would experience hardship, the record contains two copies of a medical letter from the stating that the Applicant tested positive for pregnancy, and that her estimated due date was The record contains no other evidence to establish what specific hardships the Applicant's spouse, the only qualifying relative in this case, will experience if the Applicant relocates abroad.

Upon review, the cumulative evidence in the record is insufficient to establish that the Applicant's spouse would experience extreme hardship were he to remain in the United States while the Applicant relocates abroad as a result of her inadmissibility.

The evidence in the record is also insufficient to establish that the Applicant's spouse would experience extreme hardship if he relocated to the Dominican Republic with the Applicant. As noted above, the record does not contain personal statements from the Applicant or her spouse about hardship upon relocation. Counsel for the Applicant indicates, however, that the Applicant's spouse works in a specialized field as a bid negotiator, that success in his job depends on long-term relationships with clients, and that he would be unable to do this type of work in the Dominican Republic. Counsel also indicates that the Applicant's spouse suffers from depression and that it would be difficult to relocate to the Dominican Republic because there is poverty in the Dominican Republic and because he has no friends, financial prospects or support system there. In addition, counsel for the Applicant asserts that the Applicant's spouse supports his brother financially in the United States, and that he would be unable to support his brother if he relocated to the Dominican Republic.

The evidence in the record does not address or corroborate counsel's assertions that the Applicant's spouse, a native of the Dominican Republic, would be unable to find work in the Dominican Republic, or that he would experience extreme financial, professional or emotional hardship if he relocated there. Nor does the record establish that the Applicant's spouse would not be able to continue to financially provide for his brother. Nor has it been established that the Applicant's child will experience hardship abroad that would in turn cause hardship to the Applicant's spouse, the only qualifying relative in this case. Considering the evidence in the aggregate, the record is insufficient to establish that the Applicant's spouse would experience extreme hardship if he relocated abroad as a result of the Applicant's inadmissibility.

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. The Applicant has therefore not established extreme hardship to a qualifying relative, as required under section 212(i) of the Act. Having found the Applicant ineligible for relief, we find no purpose would be served in discussing 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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-Y-Y-*, ID# 12921 (AAO Oct. 26, 2015)