U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-J-

DATE: OCT. 22, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a citizen of Vietnam currently residing in the United States, has applied to adjust status to that of a lawful permanent resident. A foreign national seeking to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud/misrepresentation and seeks a waiver of that inadmissibility. Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). 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 of the San Jose, California Field Office denied the application, concluding that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation and that he did not establish that his U.S. citizen spouse would experience extreme hardship if he is denied admission to the United States. On appeal, we agreed that the record established the Applicant is inadmissible for misrepresentation and that the Applicant had not established his spouse would experience extreme hardship if he is denied admission to the United States. In denying the Applicant's subsequent motion to reopen and reconsider, we again found that the record supports the finding of inadmissibility and that the record does not support that the Applicant's spouse will face extreme hardship if the Applicant is unable to reside in the United States.

On this second combined motion to reopen and reconsider, the Applicant submits additional evidence and asserts that he is not inadmissible for fraud or misrepresentation and that his spouse would experience extreme hardship if he is denied admission to the United States.

Upon review, we will deny the combined motion to reopen and reconsider.

I. LAW

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our previous decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. A motion to reconsider must be supported by any pertinent precedent or

adopted decision, statutory or regulatory provision, or statement of USCIS or Department of Homeland Security policy. 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

In addressing the Applicant's assertions on his prior motion, incorporated here by reference, we affirmed that the record contains evidence that the Applicant misrepresented his marital status, a material fact, during his nonimmigrant visa interview, and therefore supports the finding that he is inadmissible for misrepresentation. Regarding assertions of hardship to the Applicant's spouse, we concluded that the Applicant had not established that his spouse would experience hardship beyond that typically experienced as a result of family separation if she remained in the United States without him. With respect to relocation, we determined that the record does not establish that the spouse's parents have significant medical conditions that require the spouse's assistance, that there is no evidence the spouse would face any specific hardship as a result of general political and societal conditions in Vietnam, and that the Applicant has not established the lack of available and affordable medical services. Based on the record, we found that the Applicant had not established that his spouse would experience hardship beyond the common results of removal or inadmissibility if she relocated to Vietnam with him.

With the current motion the Applicant submits a brief; updated affidavits from himself and his spouse; a letter from the Applicant's ex-spouse; a letter from the psychologist who provided an evaluation of the spouse; a letter from a marital and family therapist about the spouse; financial documentation; verification of the Applicant's divorce in Vietnam; and country conditions information for Vietnam.

A. Inadmissibility

The Applicant was found inadmissible for misrepresenting his marital status when applying for a visitor visa in 2014. On a Form DS-160 nonimmigrant visa application the Applicant indicated that he was married when he was in divorce proceedings and that his spouse's address was the same as his mailing address when she was not in fact living there.

On motion, the Applicant repeats the assertions that he is not inadmissible for misrepresentation because his marital status was not material to a visitor's visa and that any misrepresentation was not willful. The Applicant calls it speculative that a consular officer would have processed his visa application differently had the officer known about the divorce.

As we clarified in previous decisions, when determining whether visa applicants are entitled to temporary visitor classification consular officers must assess whether the applicants (1) have a residence in a foreign country they do not intend to abandon, (2) intend to enter the United States for a limited duration, and (3) seek admission for the sole purpose of engaging in legitimate activities relating to business or pleasure. Disclosing information regarding the Applicant's pending divorce

would likely have led to an additional line of questioning that may have resulted in a determination that he was an intending immigrant and inadmissible under section 212(a)(7)(A)(i)(I) of the Act.

The Applicant again argues that when he filed the visa application he was still legally married and that at his visa interview he was unaware that he was already divorced, so any misrepresentation was not willful. The Applicant repeats that he was interviewed for a visa on November 24, 2014, but he did not obtain verification of the divorce until 2014. Irrespective of the Applicant receiving verification of his divorce after his visa interview, he was aware that he was already living separated from his former spouse, had filed for divorce, and that final documentation was imminent.

The Applicant further asserts that he did not tell a consular officer that he was living with his former spouse and the visa application correctly indicated his address to be his former spouse's mailing address. The Form DS-160 provided the Applicant's home address and he indicated on the form that his former spouse's address was the same as his mailing address. His argument that the application indicated only his former spouse's mailing address and not that she resided there is unpersuasive. In a previously-submitted affidavit, the Applicant stated that he and his former spouse were married in 2013 but broke up in the summer of 2013 and the letter from his former spouse submitted on motion also states that they married in 2013 but separated shortly after and she moved out, although she still received mail at the residence that they had shared. The indication and inference on the visa application was that the Applicant's former spouse lived at his address, which was not accurate at the time, and the Applicant did not clarify that she was actually living at a separate address.

As we previously determined, the record contains evidence that the Applicant misrepresented his marital status, a material fact in obtaining a nonimmigrant visa, and therefore supports the finding that he is inadmissible under section 212(a)(6)(C)(i) of the Act. The evidence the Applicant submits on motion does not overcome our previous findings.

B. Waiver

On motion, the Applicant states that without his income his spouse could not pay the mortgage and other bills while he could not earn nearly the same salary in Vietnam to assist her while he would also have living expenses there. He points out that he works in banking and submits an example of a job announcement with a bank in Vietnam. The Applicant contends that his spouse would be forced into bankruptcy and lose their home, worsening her psychological suffering.

The spouse maintains that the Applicant earns $78,000 and she earns $58000 with a net monthly income of less than $4,000, while they have a $600,000 mortgage with a $4,431 monthly payment, plus $160,000 in credit card debt. She claims that without the Applicant she will have to declare bankruptcy that would affect her future employment and cause more depression. With the motion, the Applicant submits pay statements for himself and his spouse. The record also contains a mortgage statement, income tax documentation, bank statements, credit card statements, utility bills, and property tax bill.

The Applicant asserts that his spouse is already struggling with psychological breakdowns and anxiety and refers to a letter from a psychiatrist about the spouse's depression. The Applicant also asserts that the spouse is unable to perform duties at work, and maintains that her mental health condition has worsened with daily mental breakdowns and panic attacks. The Applicant and his spouse state that the spouse's employer does not offer health insurance so she depends on the Applicant's health coverage, but while he was not working when his work authorization expired she could not afford therapy for depression. They state that with the Applicant again working his spouse has started mental health treatment. The spouse contends that her mental health condition is worsening, she breaks into tears with panic attacks and negative thoughts, and she is unable to perform duties at work which makes her worry that she might lose her job.

A letter from the psychologist who evaluated the spouse contends that the previous evaluation was detailed with testing, an interview, and a diagnosis of major depression recurrent (severe), which includes more severe symptoms than adjustment disorder. The psychologist asserts that the spouse already has profound anxiety and depressive symptoms that will be exacerbated if the Applicant is removed, and opines that if the spouse relocates to Vietnam the separation from her parents would exacerbate her depression and anxiety. She surmises that the spouse feels desperate and removal of the Applicant would mean further deterioration.

A letter from a therapist states that the spouse sought treatment for depression, insomnia, and severe anxiety, and that she has feelings of sadness and hopelessness, is struggling with concentration, and is finding it difficult to function at work where she has missed 22 days in last six months in addition to days where panic attacks caused her to leave. The therapist states that he diagnosed the spouse as suffering major depressive disorder, recurrent (severe), and that he has scheduled follow up appointments for treatment.

Considering the evidence in the record, including that submitted on motion, we find it is insufficient to establish that the Applicant's spouse would experience extreme hardship due to separation from the Applicant. The Applicant and his spouse contend that the spouse cannot afford their expenses without the Applicant. Although the record shows the Applicant and spouse with a large mortgage and considerable debt, much of the debt is in the Applicant's name rather than the spouse, and the Applicant has not establish his spouse would be unable to support herself as she is gainfully employed and the record reflects they also receive rental income from another property they own. Further, the Applicant has not shown that he would be unable to earn income in Vietnam to assist his spouse, given his educational and professional background reflected in the record. In an affidavit submitted in support of his Form I-485, Application to Register Permanent Residence or Adjust Status, the Applicant stated that at his visa interview he presented evidence of $70,000 in savings, which suggests that he would be able to earn an income in Vietnam.

The Applicant and his spouse also assert that the spouse struggles emotionally and will suffer if separated from the Applicant. The spouse asserts she breaks into tears, has panic attacks, and it affects her work, but she provides little detail of the impact on her daily life or evidence of difficulty

performing her job duties as a result. We acknowledge the letters from the psychologist and the therapist about the spouse's diagnoses and that she seeks treatment, but the letters do not establish that the spouse's emotional hardship is beyond that commonly experienced due to separation from a loved one. The therapist indicates that the spouse was interviewed in June 2018 and that she had missed 22 days of work in the last six months. Although the spouse's pay statements at the end of 2017 indicate a negative "vacation" balance, her June 2018 statement submitted with the motion indicates a positive balance and, thus, does not support that she has missed substantial amounts of work over the previous months.

Regarding hardship to the spouse upon relocation, the Applicant contends that health care in Vietnam is not adequate for his spouse's conditions and that she would lose health insurance and face a financial detriment because the only adequate medical care is in expensive private clinics. The Applicant maintains that his spouse is diabetic with substantial daily costs for medication, that she must see a doctor regularly to monitor vision and cardio vascular complications as well as her allergies and depression. To support assertions that the spouse would experience extreme hardship by relocating to Vietnam, the Applicant refers to a U.S. Department of State report that health care in Vietnam does not meet Western standards and is limited in metropolitan areas and nonexistent in some rural areas.

Despite the Applicant's assertions of his spouse's health issues, the medical record is unclear in establishing the severity of any condition. A medical record indicates she was diagnosed with diabetes mellitus type 2, but there is no clear statement from a treating physician about the spouse's condition or any required treatments. The medical record also lists the spouse's numerous allergies, but there is no description of how and to what extent her allergies would be impacted by conditions in Vietnam.

We recognize that some degree of hardship is present; however, to be considered "extreme" the hardship must exceed that which is usual or expected. While we acknowledge the assertions regarding hardship to the Applicant's spouse if the waiver is denied, the evidence submitted on motion does not establish the existence of extreme hardship to the Applicant's spouse. Therefore, the Applicant's motion submission does not demonstrate that we erred in finding him ineligible for a waiver, and it will remain denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of T-J-*, ID# 1815103 (AAO Oct. 22, 2018)