U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-F-

DATE: SEPT. 8, 2015

APPEAL OF MIAMI FIELD OFFICE DECISION

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

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

The Applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure a benefit under the Act through fraud or material misrepresentation. 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. The Applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The Director concluded that the Applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal[1] the Applicant states that she is not inadmissible under section 212(a)(6)(C)(i) of the Act, as she had already entered the United States without inspection when she misrepresented her identity to immigration officials. The Applicant also states that she did not intentionally misrepresent her identity. Finally, the Applicant also states that the factual circumstances in a prior unpublished decision of this office are similar to hers and that in that case, the Applicant was found not to be inadmissible under section 212(a)(6)(C)(i).[2]

---

[1] Counsel requests on appeal that we issue a briefing schedule "if any issues need clarification"; however, the Form I-290B, Notice of Appeal or Motion, and accompanying instructions indicate that all briefs or additional evidence should be attached or submitted within 30 days, if so indicated on the form. We do not issue additional briefing schedules. Moreover, while the Applicant timely filed her appeal in November 2013, we did not receive it until February 2015.

[2] Although 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on U.S. Citizenship and Immigration Services employees in the administration of the Act, unpublished decisions are not similarly binding. Moreover, the facts of the unpublished case the Applicant cites differ from her case with respect to the materiality of the misrepresentation and the benefit sought under the Act.

The record includes, but is not limited to: biographical information for the Applicant and her spouse; financial records, including bank account statements, car insurance premium statements, and copies of federal income tax returns; photographs; property records; and utility bills. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) states:

> (i) 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 Act is inadmissible.

In order to be found inadmissible for fraud or willful misrepresentation, an individual must seek to procure, have sought to procure or have procured a visa, other documentation, admission, or other benefit under the Act. A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys*, 485 U.S. at 771-72. The Board of Immigration Appeals (BIA or Board) has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, 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 proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

It is also well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for inadmissibility under section 212(a)(6)(C)(i) of the Act to be found. *See Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I & N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961).

Concerning the willfulness of the Applicant's stated misrepresentations, 9 FAM 40.63 N5, in pertinent part, states that:

> The term "willfully" as used in INA 212(a)(6)(C)(i) is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. In order to find the element of willfulness, it must

be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately made an untrue statement.

Moreover, an individual cannot deny responsibility for any misrepresentations made on the advice of another, unless it is established that the Applicant lacked the capacity to exercise judgment. *See* Memo, from Lori Scialabba, Act. Assoc. Dir., Dom. Ops., Donald Neufeld, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators* 13 (March 3, 2009) (stating that an applicant is responsible for action taken by a representative if the applicant is aware of that action and does not lack the capacity to exercise judgment).

On appeal, the Applicant states that she did not willfully misrepresent her identity to immigration officials after she entered the United States in 1988 and that even if it were shown that she did, the misrepresentation was not material because she did not gain any benefit under the Act as a result of the misrepresentation. In a sworn statement taken on January 31, 2012, and on her Form I-601, the Applicant states that she held a magazine with a label in the name of another individual when she entered the United States, but to her knowledge, she never used the name on the magazine and all documents were prepared under her birth name. She also asserts that a coyote in Mexico had given her the magazine to provide to immigration officials if she were apprehended. The Applicant claims that she did not know that there was an I-94 card and Social Security card inside the magazine that belonged to another individual. The Applicant submitted and signed an Application for Redetermination of Custody Status in the name on the magazine label –

The record indicates that the Applicant was apprehended by U.S. immigration officials on May 1, 1988, in , Texas, and reported that she entered the United States without inspection on April 29, 1988, near , Texas. The Applicant provided her name and stated that she was from Honduras. The Applicant's birth certificate reflects that this is her true identity. A Form I-221S, Order to Show Cause, was issued, stating that the Applicant was subject to deportation, as she had entered the United States without inspection. The Applicant was released on her own recognizance and signed a Form I-220A, Order of Release on Recognizance, stating that she would not leave the District without permission and that she would report in person monthly to the Officer in Charge of the immigration office in Texas.

The record shows that three days later, on May 5, 1988, immigration officials apprehended the Applicant at the International Airport when she was attempting to board a northbound flight. The record shows that the Applicant presented an I-94 card and Social Security card in the other name, The Applicant later stated to immigration officials that she had purchased the documents in Mexico for $100. She maintained on an Application for Redetermination of Custody Status that her true and correct name was and she was born in Nicaragua; she also named a husband and son, born in and a citizen of Nicaragua.

This information contradicts the Applicant's statement that U.S. immigration officials used the name appearing on a magazine she held, that she did not know that official U.S. documents belonging to another individual were in that magazine, and that she believed that documents issued by the coyote

had been in her true name. Moreover, the Applicant provided additional false information to the immigration officials, including the name of a false husband and child, information that was not on the false documents. The Applicant stated that she would reside with her husband in [redacted] were she to be released from detention. She also claimed to have entered the United States without inspection on April 30, 1988, a day after she claimed previously to have entered. She also stated to the immigration officials that she had not been previously released on bail or other conditions, pending deportation proceedings, where the record indicates that three days earlier she had been released on her own recognizance and ordered to remain in the [redacted] district pending deportation proceedings. The Application for Redetermination of Custody Status was signed by the Applicant using the name [redacted] An attorney representing the Applicant also filed a Motion for Redetermination of Custody Status pursuant to then 8 C.F.R. §242.2,[3] on behalf of the Applicant, dated May 10, 1988. The Applicant was released on her own recognizance.

The Applicant's statement that she did not willfully misrepresent her identity and details of her immigration and personal history is not credible in light of the detailed information she provided to U.S. immigration officials on May 5, 1988. The Applicant relayed multiple false statements regarding her immigration history and personal details to U.S. immigration officials, including, in her Application for Redetermination of Custody Status, maintaining that she had not been arrested and released pending deportation proceedings and ordered to remain in the [redacted] district three days earlier under her true identity.

Release from custody during the pendency of immigration proceedings (then deportation proceedings) is a benefit under section 236 of the Act, 8 U.S.C. 1226. Moreover, the circumstances of the Applicant's prior arrest and release on recognizance were material to the second custody determination under her assumed identity. Specifically, in her true identity, the Applicant had been ordered not to leave the [redacted] district and was apprehended while attempting to board a plane out of the district. The Applicant's violation of the terms of her prior release was material to her eligibility for a benefit she sought under the Act, her second release from custody, and by providing U.S. immigration officers a different name, date of birth, and nationality than the ones she provided a few days earlier, the Applicant shut off a line of inquiry relevant to the benefit she sought. In light of the record, we find that the Applicant made a material misrepresentation to a U.S. government official to obtain a benefit under the Act and as a result is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

> (1) The Attorney General [now the Secretary of the Department 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

[3] This regulation, titled, "Apprehension, custody, and detention," addressed procedures for release from custody, among other matters; however, it no longer exists as 8 C.F.R. §242.2.

> 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.

The Applicant is eligible to apply for a waiver of inadmissibility pursuant to section 212(i) of the Act. In order to qualify for this waiver, she must first prove that the refusal of her admission to the United States would result in extreme hardship to a qualifying relative. The Applicant's only qualifying relative is her U.S. citizen spouse. Hardship to the Applicant will not be separately considered, except as it is shown to affect the Applicant's spouse. If extreme hardship to a qualifying relative is established, the Applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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 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 deportation, 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, 885 (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*, 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.

On appeal the Applicant does not address the hardship her husband will experience as a result of her inadmissibility. Before the Director the Applicant stated that her husband was experiencing extreme emotional and psychological distress at the possibility of their separation. The Applicant stated that her husband was previously an alcoholic and that if he were separated from her, he may develop a clinically significant major depressive disorder, which carries a chance of relapse "and even a significant risk of suicide." The Applicant did not submit documentation in support of these assertions.

Although the Applicant's assertions have been taken into consideration, insofar as they affect the hardship to her qualifying relative, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The Applicant also stated that she and her husband own a property and a small restaurant. Similarly, no documentation was submitted to support this assertion. The record contains documentation of a mortgage issued to an individual named [redacted] however, no similar mortgage, property or business ownership or license documents issued in the Applicant or her spouse's name in appear in the record. The Applicant's previous name appears with Ms. [redacted] name on a warranty deed and title insurance for one property, but no other documentation is provided regarding the claimed business. The Applicant stated that her spouse will be unable to maintain the business without her, as she takes care of the business's finances. The Applicant submits no documentation, such as business records or affidavits, to support this assertion. Moreover, only counsel makes these

assertions, in a letter submitted on behalf of the Applicant. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503,506 (BIA 1980).

Although the Applicant's spouse's emotional and psychological response to being separated from his spouse is understandable and relevant to evaluating his hardship, the record lacks documentation to support that this hardship would amount to extreme hardship. We recognize the serious impact of separation on families in similar circumstances, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship is beyond that which is normally experienced by families faced with a loved one's removal or inadmissibility. *See Matter of O-J-O-,* 21 I&N Dec. at 383.

The Applicant does not assert that her spouse, a native and citizen of Cuba, would experience hardship if he were to relocate to Honduras. The Applicant did not submit documentation to show her spouse's ties to the United States. The record contains documentation that the Applicant's spouse has held employment in the United States, but no records support claims that he is a small-business and property owner. The Applicant bears the burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. We take note of the U.S. Department of State Travel Warning for Honduras, issued on March 2, 2015; however, the Applicant has not stated what particular hardship her husband may face as a result of the conditions in Honduras. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the Applicant's spouse relocate to Honduras, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *See Matter of O-J-O-,* 21 I&N Dec. at 383.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the Applicant's U.S. citizen spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The Applicant has not established extreme hardship to a qualifying relative, as required under section 212(i) of the Act. As the Applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether she 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. 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 N-F-*, ID# 10739 (AAO Sept. 8, 2015)