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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Z-T-Y-C-

DATE: DEC. 11, 2015

APPEAL OF NEWARK FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Ecuador, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Director, Newark Field Office, denied the waiver 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 fraud or willful misrepresentation when attempting to procure entry to the United States. She seeks a waiver under section 212(i) of the Act in order to reside in the United States with her spouse and children.

In a December 5, 2014, decision, the Director concluded that the Applicant had not established that the bar to her admission would impose extreme hardship on her qualifying relative. The Form I-601 was denied accordingly.

On appeal, the Applicant asserts that she is not inadmissible, and alternatively that her qualifying spouse would suffer extreme hardship if the waiver application is not granted. The Applicant's spouse states that he suffers from neck pain caused by a car accident, that he needs the Applicant for support and that he requires assistance with expenses and their children. He also indicates that he is experiencing stress and loneliness due to his immigration issues. He believes that he would suffer medical and economic hardship, as well as safety issues, if he relocates to Ecuador. In addition, the spouse notes that his assets are in the United States and he has close family ties here. The spouse also asserts that his children would face educational, economic and cultural hardships upon relocation. In support of the appeal, the Applicant submits a brief, biographic and immigration documents, documentation for their daughter regarding her academics and her involvement in the [redacted] medical documentation for the spouse, and a letter from the spouse. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

> (i) In general. 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, in pertinent part:

> (1) The Attorney General [now 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 immigrant 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.

On appeal, counsel asserts that the Applicant is not inadmissible. Counsel indicates that the misrepresentation was made by a relative on the Applicant's behalf and questions whether the Applicant signed the forms. Counsel next states that the Applicant did not make a material misrepresentation because she was not aware of the information until the date of her adjustment interview. Counsel further asserts that, as the Applicant was unaware of this information until her adjustment interview, the Applicant likewise did not have any opportunity to retract herself until 22 years after the misrepresentation during her adjustment interview.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the Applicant's burden of proof. 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). The record establishes that the Applicant attested in an April 24, 2014, sworn statement that, on or about February 1993, the Applicant used a passport that she obtained from a coyote in an attempt to procure admission into the United States. In addition, on the Form I-601, the Applicant stated that she was inadmissible to the United States "because I used someone else's passport to enter the United States in 1993."

Moreover, the record does not support counsel's contention that the Applicant was unaware of her misrepresentations or was unable to recant until her adjustment interview. In the Applicant's sworn statement, she states that she obtained a passport from a coyote and paid the coyote $6,000, and also indicates that no one else had access to the fraudulent passport.

Lastly, with respect to counsel's contention that the Applicant did not receive any benefits for her fraud or willful misrepresentation, a plain reading of the statute indicates that section 212(a)(6)(C) of the Act does not require that the Applicant procure a visa or benefit in order for inadmissibility to apply. Section 212(a)(6)(C) of the Act states that an alien is inadmissible if he or she "seeks to procure (*or has sought to procure* or has procured) a visa" through fraud or misrepresentation of a

material fact. (*Emphasis added*). Thus, the plain language of section 212(a)(6)(C) of the Act shows that it applies in cases where an applicant attempts to procure a benefit under the Act but is unsuccessful.

The Act makes clear that a foreign national seeking admission must establish admissibility "clearly and beyond doubt." *See* section 235(b)(2)(A) of the Act; *see also* section 240(c)(2)(A) of the Act. The same is true for demonstrating admissibility in the context of an application for adjustment of status. *See generally Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008); *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008); *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). The record establishes that the Applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation in seeking to procure admission into the United States.

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. Hardship to the Applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The Applicant's spouse is the only qualifying relative in this case. 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).

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. . . [,] and while an analysis of a given application includes a review of all claims put forth in light of the facts and circumstances of a case, such analysis does not extend to discovery of undisclosed negative impacts." *Matter of Ngai,* 19 I&N Dec. 245, 246-47 (BIA 1984). 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). 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).

The Applicant's spouse asserts that the Applicant provides him with support and that she helps him take care of the expenses and their children. It appears that the support to which the spouse refers is physical and emotional, as he indicates that he is suffering from neck pain, stress and loneliness. The record contains copies of medical records, including progress notes and reports containing medical terminology and abbreviations that are not easily understood. The documents submitted were prepared for review by medical professionals, and do not contain a clear explanation of the

current medical condition of the spouse. While the medical documentation regarding the spouse confirms that the spouse is suffering from neck pain, and has also undergone corrective surgery, absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, we cannot reach conclusions concerning the current severity of a medical condition or the treatment needed. Likewise, it appears that the spouse is also suffering emotionally due to his immigration situation. However, there is little detail regarding his emotional issues or the type and extent of support that the spouse requires or that the Applicant provides, or, consequently, the hardship the spouse would experience without the Applicant's emotional support.

With regard to the financial hardship that the spouse would experience upon separation, the spouse states that that the Applicant takes care of the expenses. It is unclear whether the spouse is referring to assisting with the paperwork involved in paying the bills or to financially contributing to the family income. The record contains a letter from the spouse's employer, but there is no indication whether the Applicant currently has a job. Moreover, the record does not contain any information related to their expenses. As such, it is difficult to assess the spouse's financial reliance upon the Applicant. We note that the spouse would experience some difficulties in the event he is separated from the Applicant. However, based on the record before us, we are unable to find that separation from the Applicant would result in extreme hardship for her spouse.

The spouse's assertions with respect to his hardships upon relocation to Ecuador are not sufficiently supported by evidence of record. Concerning these hardships, the spouse, a native of Ecuador, indicates in his letter that he will suffer medical hardships if he relocates to Ecuador. He maintains that he would not have the same level of health care or access to healthcare as is available in the United States. He further states that he needs to be constantly controlled by a doctor. The spouse also claims he and the Applicant would be unable to find employment and/or receive an adequate wage in Ecuador. Moreover, the spouse asserts that his children would face educational, economic and cultural hardships upon relocation to Ecuador including difficulties obtaining a good education, finding a job and learning the language. However, the record does not contain any documentation in support of these assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *In re Soffici*, 22 I&N Dec. 158, 165 (Reg'l Comm'r 1998); *see Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972). Moreover, the spouse notes that his assets are in the United States and he has close family ties here, including the Applicant and his children. However, the Applicant provides no evidence addressing the extent of any family ties to Ecuador.

We acknowledge that the spouse may face difficulties in Ecuador and such difficulties represent a hardship; however, the Applicant has not provided sufficient evidence establishing her spouse's specific hardships or demonstrating that his cumulative hardships upon relocation would be extreme.

The record, reviewed in its entirety, does not support a finding that the Applicant's lawful permanent resident spouse will face extreme hardship if the Applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but

expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the Applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although we are not insensitive to the Applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law.

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 Z-T-Y-C*, ID# 13958 (AAO Dec. 11, 2015)