



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF Y-E-T-

DATE: APR. 19, 2016

APPEAL OF WASHINGTON FIELD OFFICE DECISION

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

The Applicant, a native and citizen of El Salvador, seeks a waiver of inadmissibility for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence 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, Washington, D.C. Field Office, denied the application. The Director found the Applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting her dates of entry into the United States in order to obtain temporary protected status (TPS). The Director concluded that she had established extreme hardship to a qualifying relative but denied her waiver application as a matter of discretion.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that she was coerced into filing for TPS with false information and submitting false documents in support of her TPS application and thus she did not willfully misrepresent any material facts. The Applicant further states that she warrants a favorable exercise of discretion because the positive factors in her case outweigh the negative factors.

Upon *de novo* review, we will sustain the appeal.

I. LAW

The applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for fraud or misrepresentation, specifically having misrepresented her date of entry into the United States in order to obtain TPS in the United States. Section 212(a)(6)(C)(i) of the Act states:

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.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides, in pertinent part:

(1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 issues presented on appeal are whether the Applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and whether the Applicant warrants a waiver as a matter of discretion. The Applicant states that notaries and others coerced her into filling out and signing immigration forms with false information and submitting fake employment records in support of her TPS application. She claims that she did not understand what she was signing and did not willfully submit false information or documents, and she is therefore not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The Applicant further asserts that she warrants a favorable exercise of

discretion because the positive factors in her case outweigh the fact that she obtained TPS by providing false information.

On appeal, the Applicant submits additional statements from herself and her spouse, additional medical records pertaining to her spouse, tax and financial documents, and background materials on El Salvador. The record also includes evidence previously submitted in relation to this application, including, but not limited to: medical records pertaining to the Applicant's spouse; background materials on medical conditions pertaining to the Applicant's spouse; tax records, pay stubs and other financial records; and background materials on the social and economic conditions in El Salvador.

The record demonstrates that the Applicant provided false information when initially applying for TPS and in several subsequent applications to re-register for TPS, and she has not established that she was unaware of the false information contained in any of the applications or was coerced in any way when she submitted them. She is therefore inadmissible under section 212(a)(6)(C)(i) of the Act and requires a waiver of inadmissibility. The Applicant previously established that a qualifying relative will experience extreme hardship due to her inadmissibility, and on appeal, we find that the Applicant has established she warrants a waiver as a matter of discretion.

#### A. Inadmissibility

As stated above, the Director found the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. Specifically, the record indicates that when the Applicant initially applied for TPS in 2002, she falsely stated that she had last entered the United States prior to February 13, 2001, and had not left since that time, which was a requirement to qualify for TPS. She received TPS based on her misrepresentations and renewed the registration every filing period through 2013, when it was determined that she had not continuously resided in the United States since February 13, 2001, but had entered the United States on January 22, 2002, with a B2 visa. The Applicant claims that due to coercion from the notaries who assisted her with her TPS filings and her inability to read English, she did not know what she was signing when she applied for TPS and thus did not willfully misrepresent material facts.

For a misrepresentation to be willful, it must be determined that the Applicant was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *See generally Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). To be willful, a misrepresentation must be made with knowledge of its falsity. 7 I&N Dec. at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we "closely scrutinize the factual basis" of a finding of inadmissibility for fraud or misrepresentation because such a finding "perpetually bars an alien from admission." *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994); *see also Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998) and *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979).

(b)(6)

*Matter of Y-E-T-*

The record indicates that the Applicant made numerous misrepresentations concerning her dates of entry and departure from the United States in order to obtain TPS and to maintain that status over a ten-year period. The Applicant states that “notaries” and others “coerced” her into filling out and signing immigration forms with false information and submitting fake employment records in support of the applications. Because USCIS applications are signed “under penalty of perjury,” an applicant, by signing and submitting the application or materials submitted with the application, is attesting that his or her claims are truthful. Policy Manual Volume 8, Admissibility, Part J – Fraud and Willful Misrepresentation, Chapter 3(D)(1). The record does not support the claim that the Applicant was coerced into using a false date of entry on her initial application for TPS. Although she states she did not understand what forms she was filing, she continued to file for renewal of her status until 2013. In each of her seven applications to re-register for TPS, as well as applications for employment authorization, she stated that she had entered the United States without inspection on November 15, 2000, near ██████████, Arizona. Further, each of these applications lists a different preparer and is signed by the Applicant under penalty of perjury, and there is no evidence that she was coerced by any of these preparers to provide this false information. As such, we find the Applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for misrepresenting material facts in order to receive an immigration benefit.

B. Waiver

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case the Applicant’s spouse.

The Director previously determined that the Applicant had established extreme hardship to a qualifying relative due to her inadmissibility. The Applicant had explained that her spouse suffers from several serious medical conditions, including congestive heart failure, kidney disease and thyroid disease, and that it would be an extreme hardship for him to care for their ██████████ son if she were removed. The record contains documentation establishing the severity of the medical condition of the Applicant’s spouse and evidence regarding the impact on the Applicant’s spouse of having to care for their ██████████ son while on disability if the Applicant were removed.

As the Director’s conclusion regarding extreme hardship is supported by the record, we find no basis to disturb the determination that a qualifying relative will experience extreme hardship due to the Applicant’s inadmissibility.

C. Discretion

As the record establishes that a qualifying relative will experience extreme hardship, we now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). We must “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

(b)(6)

*Matter of Y-E-T-*

exercise of discretion appears to be in the best interests of the country.” *Id.* at 300 (citations omitted). In evaluating whether to favorably exercise discretion,

the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country’s immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of the alien’s bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country’s Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien’s good character (e.g., affidavits from family, friends and responsible community representatives).

*Id.* at 301 (citations omitted). We must also consider “[t]he underlying significance of the adverse and favorable factors.” *Id.* at 302. For example, we assess the “quality” of relationships to family, and “the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed].” *Id.* (citation omitted).

The negative factors in this case include the Applicant’s misrepresentations in initially filing for TPS and in each additional application for TPS registration. USCIS records indicate that the Applicant filed applications to reregister her TPS status using the same false information in 2006, 2008, 2010, 2012 and 2013. The false documents submitted included paystubs for work during periods when the Applicant was not actually present in the United States. Based on the false information provided by the Applicant, she was granted TPS and allowed to work in the United States when she otherwise would not have been eligible for TPS or work authorization.

The Director found that the factors weighing in favor of discretion were the Applicant’s length of residence in the United States, her marriage to a U.S. citizen, her spouse’s medical conditions, the presence of her U.S. citizen child and the fact that the Applicant is the main provider for their family.

The Applicant has expressed fear that her [REDACTED] son would be in danger and face forcible recruitment by a gang if he relocated to El Salvador with her. The record contains news articles and reports by the U.S. Department of State, Overseas Security Advisory Council, and the U.S. Agency for International Development, which discuss the ongoing problem with gang violence in El Salvador. A January 15, 2016, U.S. State Department Travel Warning for El Salvador states that crime and violence are at a critical high in El Salvador. The Travel Warning describes the escalating gang war tactics in El Salvador and attributes the high rate of disappearances in the country to gang-related activity. Further, we take administrative notice that El Salvador suffered an earthquake in

(b)(6)

*Matter of Y-E-T-*

2001 which devastated much of its infrastructure and left the country struggling socially and economically. In response to the difficult living conditions there at the time, El Salvador was designated by the Attorney General for Temporary Protected Status on March 9, 2001. *See* 66 Fed. Reg. § 47 (March 9, 2001). TPS for El Salvador has been extended through September 9, 2016. *See* 80 Fed. Reg. § 893 (March 11, 2015).

The Applicant has explained that her spouse suffers from a life-threatening medical condition and must receive extensive medical treatments on a routine basis. She also states that their [REDACTED] son would suffer emotionally and physically if she were removed because his father is disabled and would struggle to care for him. The record contains medical records for the Applicant's spouse that indicate that he has been diagnosed with end stage renal disease, requiring dialysis three times per week, and also suffers from congestive heart failure, diabetes and thyroid disease. His treating physician certifies in a Medicare registration document that he is disabled due to end stage renal disease and needs assistance with daily activities. Joint income tax returns in the record indicate that the Applicant is the only current income earner.

The record establishes that the Applicant has strong family ties to the United States, has resided in the United States since 2002, and is gainfully employed. Her spouse would experience hardship related to his medical conditions if the Applicant were not present to assist him with his daily activities or provide income for their family. The other factors which weigh in favor of exercising favorable discretion are the hardship to the Applicant if she were removed to El Salvador after residing in the United States for almost 15 years and hardship to her son, whether he relocated to El Salvador or remained in the United States without his mother in the care of his disabled father.

When the totality of the circumstances is considered in this case, we find that the positive factors outweigh the negative factors and the Applicant merits a favorable exercise of discretion.

### 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. Accordingly, we sustain the appeal.

**ORDER:** The appeal is sustained.

Cite as *Matter of Y-E-T-*, ID# 15970 (AAO Apr. 19, 2016)