U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-E-E-M-

DATE: AUG. 12, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Jamaica, seeks a waiver of inadmissibility for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) section 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 Field Office Director, Newark, New Jersey, denied the application and a subsequent motion to reconsider. The Director concluded that the Applicant had not established that the bar to her admission would impose extreme hardship on the Applicant's qualifying relative. We summarily dismissed the following appeal because the Applicant did not specifically identify any erroneous conclusion of law or statement of fact in the Director's decision.

The matter is now before us on a motion to reopen and a motion to reconsider. In the motions, the Applicant states that she submitted a letter on appeal requesting us to consider the legal arguments she made before the Director in connection with the motion to reconsider the denial of the waiver application, but that the letter may have been misdirected. The Applicant renews this request in the instant motions, asserting that the Director did not properly evaluate the evidence and arguments she presented in support of the Form I-601, Application for Waiver of Grounds of Inadmissibility, and the subsequent motion. In the alternative, the Applicant asserts that a waiver is not required because she did not intend to deceive or misrepresent facts to obtain a nonimmigrant visa.

We will deny the motions. The evidence does not establish that the Applicant's spouse will experience extreme hardship if the waiver is not granted.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a fraud or misrepresentation. Specifically, the Applicant misrepresented that she had a daughter during an interview before a consular officer in connection with a nonimmigrant visa application.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), 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 provides, in pertinent part:

> (1) The [Secretary of Homeland Security] 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 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 to the United States under section 212(a)(6)(C)(i) of the Act and, if so, whether the Applicant has established that her U.S.

citizen spouse would experience extreme hardship, were the Applicant unable to remain in the United States due to her inadmissibility.

We find that the evidence in the record establishes that the Applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, for having misrepresented before a consular officer that she had a child in Jamaica. Furthermore, the evidence in the record, considered both individually and cumulatively, is insufficient to demonstrate the claimed hardships to the Applicant's spouse. Because the record does not reflect extreme hardship to a qualifying relative, we will not address whether the Applicant merits 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. The Applicant provided a sworn statement, in which she admitted that when she was interviewed at the American Embassy in Jamaica, in connection with her nonimmigrant temporary worker (H2B) visa, she testified that she had a daughter. The Applicant confirms that she has no children, and that the child she claimed as her own was her brother's daughter who lived with the Applicant at the time.

The principal elements of misrepresentation that renders an individual inadmissible under section 212(a)(6)(C)(i) of the Act are materiality and willfulness. A misrepresentation made in connection with an application for visa or with entry into the United States is material if either the individual is excludable on the true facts, or the misrepresentation tends to shut off a line of inquiry which is relevant to the individual's eligibility and which might well have resulted in a proper determination that he or she be excluded. *See Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1960; AG 1961).

With respect to materiality, to be eligible for a nonimmigrant H2B visa, the Applicant had to establish that she had a residence in a foreign country which she had no intention of abandoning, and that she was coming to the United States temporarily. *See* section 101(a)(15)(H)(ii)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b). By claiming she had a daughter in Jamaica, the Applicant indicated that she had a strong family tie that would induce her to return to Jamaica after the purpose of her travel to the United States was completed. As the Applicant's claim regarding her familial status shut off a line of inquiry which was relevant to her nonimmigrant intent and, thus, her eligibility for the issuance of the nonimmigrant visa, we find that the Applicant's misrepresentation was material.

The Applicant states, however, that the misrepresentation was not willful because in Jamaica the term for familial relationships covers not only biological children, but also children under a person's care. Therefore, because the Applicant was a legal guardian of her brother's child, her statement about having a daughter was not a misrepresentation but a mere reflection of the vernacular that was customary where she lived. To support this claim, the Applicant submits a letter from the school the brother's child attended in Jamaica, confirming that the Applicant was instrumental in the child's early education and training, and that her role was not only that of an aunt, but also that of a mother. In addition, the Applicant submits a letter from her brother, who states that he left Jamaica in 2007 to

pursue studies in the United States, leaving his daughter under the Applicant's care and sending her money for the child's support.[1] The brother claims that he has filed an immigrant visa petition on behalf of the child to bring her to the United States.

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). A willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. *See Parlak v. Holder*, 57 F.3d 457 (6th Cir. 2009). Although the Applicant indicates that in Jamaica there is no distinction between biological children and children under someone's care, the Applicant has not submitted evidence to show that this is in fact the case. Further, the letters from the child's school and the Applicant's brother do not show that the Applicant was recognized as the child's mother or legal guardian by the school authorities. Rather, they state only that the Applicant took care of her brother's child like a mother. Lastly, in contrast to the Applicant's claim that there is no distinction between one's biological child and a child under her care, she indicated in her 2014 sworn statement not only that the child was her brother's daughter, but she also stated: "I have no children." In stating this, she communicated that, at least for her, the distinction existed. Accordingly, because the Applicant was aware that she was not the child's mother, we consider the Applicant's statement before a consular officer that she had a daughter to be a willful misrepresentation. As such, we affirm that the Applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for misrepresenting a material fact in order to obtain an immigration benefit.

B. Hardship

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 U.S. citizen spouse. The claimed hardships to the Applicant's spouse upon relocation include fear of living in a country that does not recognize same-sex relationships, lower standard of living and healthcare services, the spouse's inability to care for her sick mother in the United States, loss of income, and the couple's ineligibility to adopt a child. The claimed hardships from separation are emotional and health-related hardship, economic detriment, and inability to adopt a child. To demonstrate these hardships, the Applicant has submitted two affidavits by her spouse, copies of 2011-2013 federal income tax returns, Human Rights Watch reports, U.S. Department of State (DOS) Country Reports on Human Rights Practices in Jamaica, and online publications discussing situation of gay, lesbian and transgender individuals in Jamaica.

[1] Although not addressed in the Director's decision, the record of Applicant's 2013 Form DS-160, Online Nonimmigrant Visa Application, shows that the Applicant represented she had no relatives in the United States. The evidence the Applicant submitted in support of the waiver application indicates that her brother has resided in the United States since 2007, and is now a United States citizen. Accordingly, it appears that in addition to her familial status, the Applicant has also misrepresented the fact that she had a relative living in the United States at the time she applied for the nonimmigrant visa.

The Applicant's spouse indicates in her affidavits that she will not be able to relocate with the Applicant to Jamaica. She states that Jamaica is not tolerant or supportive of same-sex marriages, and it does not have laws that would protect their relationship. The Applicant's spouse further states that her finances would not allow the couple to live in a safe neighborhood. She does not, however, provide details about the cost of living in an area that she considers safe, or the couple's possible place of residence in Jamaica. The spouse claims in her affidavits that if they live in Jamaica, she and the Applicant may face incarceration because under Jamaican law homosexual acts of "buggery" are punishable by up to 10 years of imprisonment. The Applicant has submitted Human Rights Watch and DOS reports from 2004 and 2013, as well as 2012 online articles, which support her spouse's claims that homophobia was widespread in Jamaica, and that lesbian, gay, bisexual, and transgender (LGBT) individuals living there faced violence, harassment, and discrimination. However, according to the DOS Jamaica Country Report on Human Rights Practices for 2015,[2] the "antibuggery" law was only enforced in cases of sexual assault and child molestation and it was not used to prosecute consensual same-sex conduct. Therefore, the Applicant has not submitted sufficient evidence to show that she and her spouse would be subject to criminal prosecution based on their sexual orientation. While the report confirms that homophobia is widespread in the country and that there were cases of threats and physical and verbal attacks based on sexual orientation, it also states that LGBT individuals were able to address these issues in the media and public forums and advocate for their human rights. In addition, the same report indicates that several high-ranking political leaders expressed support for safeguarding human rights of members of LGBT community.

In view of the above, although the evidence the Applicants has submitted indicates that it might be difficult for her and her spouse to openly live in Jamaica in a same-sex relationship, this evidence is insufficient to establish the resulting hardship would be extreme.

The spouse also generally asserts that Jamaica lacks adequate healthcare services, proper provision of utility services, water distribution, safety and well-being, and manageable cost of living. However, the record does not include additional evidence to support this assertion. The spouse states further that she has an established career in the United States, and would be emotionally devastated and ruined financially if she had to leave her job and relocate to Jamaica. The Applicant's spouse adds that it would also be hard for her to leave the United States because she takes care of her mother who suffers from a rare medical condition, which requires frequent hospitalization, as well as other problems, including back and knee problems and hypertension. The Applicant does not submit medical documentation, such as a letter from her spouse's mother's doctor to corroborate her spouse's statement about her mother's health problems, or indicating what assistance, if any, the mother requires. Without this evidence, we are unable to determine whether the Applicant's spouse will experience hardship if she has to be separated from her mother and, if so, whether this hardship will be significant.

[2]http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dlid=253025.

We acknowledge that the Applicant's spouse will experience some difficulties, including inability to keep her current job, if she relocates to Jamaica. However, we conclude that the evidence of record is, without more, insufficient to establish that the Applicant's spouse will experience extreme hardship upon relocation.

With regard to hardship upon separation, the Applicant's spouse indicates that she will constantly worry about the Applicant's safety in the anti-gay Jamaican society, if it is discovered that the Applicant is a lesbian. The spouse states that people suspected of being gay have been subject to violent attacks, but she does not explain why the Applicant specifically would be a target of such attacks, nor does she claim that the Applicant has been attacked in the past. While counsel for the Applicant asserts in the appeal brief that "innuendo and belief" would be sufficient to cause problems for the Applicant if she were to remain unmarried in Jamaica for a long period of time, no documentation has been submitted to corroborate this assertion. The unsupported assertions of counsel do not constitute evidence. *See 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 spouse asserts that she would face additional hardship upon separation because she suffers from high blood pressure, and her doctor advises her to avoid stress. She claims that constant worry and anxiety about the Applicant's safety in Jamaica would exacerbate her health problems. However, the Applicant has not submitted documentation to show the spouse's diagnosis, severity of her claimed medical condition, and future prognosis. Similarly, although the spouse avers that she will experience financial hardship upon the Applicant's departure from the United States because she has debts and needs additional income to meet her financial obligations, the record does not reflect, and the Applicant does not submit evidence to show, that she financially contributes to the household. The record includes a copy of the spouse's 2013 W-2 Wage and Tax Statement and the couple's 2013 joint federal tax return, which indicate that only the Applicant's spouse is currently employed. Accordingly, it does not appear that that the spouse's financial situation will change dramatically if the Applicant is not with her in the United States. The spouse states that salaries in Jamaica are very low and the necessity to support the Applicant will be detrimental to her already precarious financial situation. However, the Applicant has not provided information about her intended place of residence in Jamaica, prospects for employment, possible support from the Applicant's family members living in Jamaica, or her U.S. citizen brother living in the United States. While the Applicant's spouse claims that most of the Applicant's ties are now to the United States, there is no evidence that that the Applicant's immediate family, except for her brother, currently reside in the United States.

Finally, the Applicant's spouse states that she has always wanted a family. Although she is able to have children, she would prefer to adopt a child who is in need of a loving family. The spouse asserts that the Applicant's unresolved status in the United States precludes her from adopting a child in the United States, and that adoption in Jamaica would not be possible because same-sex marriages are not recognized there. The Applicant, however, does not submit evidence to corroborate these claims. Going on record without supporting documentation will not meet the Applicant's burden of proof in this proceeding. *See 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)).

In view of the above, we find that when considered individually and cumulatively, the evidence presented by the Applicant does not establish that her U.S. citizen spouse would experience extreme hardship in the event of separation from the Applicant, or upon relocation to Jamaica.

C. Discretion

As the Applicant has not demonstrated extreme hardship to a qualifying relative or qualifying relatives, we need not consider whether the Applicant warrants a waiver in the 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 not met that burden. The record does not establish that the Applicant's spouse would experience extreme hardship if the application is denied.

ORDER: The motion is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of C-E-E-M-*, ID# 17794 (AAO Aug. 12, 2016)