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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-M-F-

DATE: AUG. 30, 2016

APPEAL OF SAN BERNARDINO, CALIFORNIA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Mexico, 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 Field Office Director, San Bernardino, California, denied the application. The Director concluded the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States by fraud or misrepresentation. The Director then determined that the Applicant had not established that denial of admission would result in extreme hardship to her spouse, the only qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant states that the Director erred in considering only some of the hardship factors, failing to consider psychological hardship to the Applicant's spouse, and not considering all the hardship factors together.

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

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a fraud or misrepresentation, specifically for entering the United States in February 1996 at the [redacted] California, Port of Entry by presenting a visa that belonged to another person.

Section 212(a)(6)(C)(i) of the Act renders inadmissible any foreign national 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 the Act.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national.

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 only issue presented on appeal is whether the Applicant's spouse would experience extreme hardship if the waiver is denied, whether he remained in the United States without her or accompanied her to Mexico. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.[1] The evidence in the record, considered both individually and cumulatively, does not establish that the Applicant's spouse would experience extreme hardship if the Applicant is not granted this waiver. The record does not contain sufficient evidence to establish that the hardship claimed would rise above the common consequences of removal or refusal of admission to the level of extreme hardship. Because there is no showing of extreme hardship, we will not address whether the Applicant merits a waiver as a matter of discretion.

[1] In a sworn statement given at her adjustment interview on January 5, 2015, the Applicant claimed that to enter the United States in February 1996 she presented immigration officers a document that was given to her, but did not belong to her. In declarations submitted to the record the Applicant stated that she had purchased a visitor's visa that allows brief visits to the United States.

A. Waiver

In this case, the Applicant must demonstrate that denial of the application would result in extreme hardship to her U.S. citizen spouse. In support of her claim of hardship to her spouse, the Applicant submitted declarations from the Applicant, her spouse, and her son; a psychological assessment of the Applicant and her spouse; country information for Mexico; letters of support; educational certificates for the Applicant; and court records for the Applicant's 2012 conviction for driving without a license. The record also contains financial documentation and civil documents submitted in conjunction with the Applicant's Form I-485, Application to Adjust Status, and Form I-130, Petition for Alien Relative. With the appeal, the Applicant submitted copies of previously submitted materials.

On appeal, the Applicant asserts that she is her spouse's primary source of physical and emotional support as he suffers physical and physiological maladies from a life of trauma. She asserts that anticipation of separation from her causes her spouse to have nightmares, be distracted, and feel distressed. The Applicant contends that she lessens her spouse's psychological trauma, but it is exacerbated at the thought of her being taken away. She further asserts that she has returned to work so she can contribute financially, that they now live with her spouse's mother, and that without their rent his mother could lose her house.

In her declaration, the Applicant asserts that she and her spouse want to have children together, but that she had a miscarriage. In his declaration the Applicant's spouse contends that he would be devastated without the Applicant. He states that it is hard to be away from the Applicant while he works as a truck driver, and that the Applicant handles day to day things like housework and paying bills while he is away. The spouse further states that the Applicant helps his mother around the house and helps with his son from another relationship and that his son could not visit if not for the Applicant being there.

A psychological assessment of the Applicant and spouse dated April 3, 2015, which was conducted over the telephone with a licensed clinical social worker in [redacted] diagnoses the spouse with major depression, post-traumatic stress disorder (PTSD) with panic attacks, and separation anxiety disorder. The report lists the spouse's symptoms, including depression, anxiety, memory and concentration problems, fear of being alone, nightmares, and quasi-suicidal thoughts. The assessment concludes that the spouse has experienced traumatic events including the death of his father when the spouse was a child, physical abuse by his father, sexual abuse from others when he was a child, abuse by his ex-girlfriends, separation from his son, the Applicant losing a baby, and the fear of the Applicant being apprehended and deported.

According to the psychological assessment, the Applicant claims her spouse is dependent on her for financial and emotional support and that he cannot care for himself. The assessment opines that the spouse is dependent on women as he has nearly always lived with his mother, so he is unable to

function without her. The assessment also indicates that the Applicant states her spouse and son were traumatized with her loss of a baby.[2]

We recognize that the Applicant's spouse will endure hardship as a result of separation from the Applicant. However, we find that the evidence submitted to the record is insufficient to establish that the Applicant's spouse would experience extreme hardship due to separation from the Applicant. The psychological assessment provides detail of the spouse's understanding of his past, but little detail of the Applicant's role in him overcoming trauma other than him not wanting to be alone. Nor has it been established that the Applicant's spouse would be unable to travel to Mexico to visit the Applicant. The record indicates that the spouse has visited the Applicant's native town, and in his declaration he states that, although difficult, he would visit the Applicant in Mexico.

The psychological assessment indicates that the Applicant states she returned to work because her spouse needs her income, and that the spouse's mother depends on them because she earns a little above minimum wage while having medical expenses due to dental work and diabetes. It notes that the mother needs rent from the Applicant and her spouse so the mother will not lose her house, and indicates that the Applicant's spouse claims that he would then have nowhere to live.

Financial documentation submitted to the record includes bank statements from October 2012 through December 2014; weekly earnings statements for the spouse from November 2013; the spouse's income tax returns for 2010, 2011, and 2012; and phone records from 2013. The record contains no current information and the Applicant does not detail or provide a list of family expenses and liabilities. Nor is there documentation to support that the Applicant is now working and contributing financially. Other than a statement from the spouse's mother dated January 3, 2015, that the Applicant and her spouse have lived with her since July 1, 2014, the record contains no documentation regarding the mother's income, medical expenses, rent paid by the Applicant, or other evidence of liabilities, assets, or her overall financial situation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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 record therefore does not establish that the Applicant's spouse would experience financial hardship in the Applicant's absence.

The Applicant also asserts that her son will experience hardship if separated from her, but the record contains little information or documentary evidence about her son, whom she maintains depends on her for financial and emotional support, has never been without her, has behavior problems, and does not earn enough to support himself. The spouse contends that without the Applicant he would have difficulty caring for her son because he is gone much of the time working. The psychological assessment also indicates that the son has serious emotional problems so the Applicant's spouse is unable to take responsibility for him without the Applicant, but the assessment provides no further information about the Applicant's son, whom the record shows is now 23 years old. The record does

[2] The record shows that Applicant was confirmed to be pregnant on December 26, 2014, but the record contains no follow up documentation.

not establish the any hardship to the Applicant's son would cause extreme hardship to the Applicant's spouse.

Here we find that the record does not establish that the Applicant's spouse will suffer hardship that rises to the level of extreme as a consequence of being separated from the Applicant. We also find the record does not establish that the Applicant's spouse would experience extreme hardship if he were to relocate to Mexico.

On appeal, the Applicant asserts that Mexico is dangerous for her spouse, that he has psychological and medical conditions that need treatment, that he will be unable to find employment, and that as he was born in the United States he will be ripped from his family.

In her declaration the Applicant states that her spouse and son would be unable to go to Mexico with her because they are U.S. citizens and it would be dangerous for them. The psychological assessment indicates that the spouse reports fearing violence and being unable to find work in Mexico. The Applicant states that she is from a small town with no job opportunities, that her spouse could not afford to get a commercial driver's license in Mexico, and that her family has no money to help or room for them in their homes. The psychological assessment notes that that spouse reports he cannot drive in Mexico because his commercial driver's license is not valid and he could not afford the necessary courses. It further states that the spouse reports being shocked by the condition of Applicant's home town when he visited. The assessment further states that the spouse reports having only distant relatives in Mexico with whom he has no contact, that there is no space to stay with the Applicant's family, and that housing conditions are bad.

The Applicant submits country information including a report on human rights, crime and drug-related violence, and employment. Although these accounts show difficult overall conditions in Mexico, they describe general conditions, and they do not establish how the Applicant and her spouse would specifically be affected. Accounts on the Mexican economy are also general and do not support that the spouse would be unable to find employment as there is no evidence to establish that he would be unable to obtain a commercial driver's license in Mexico. The Applicant and her spouse describe poor living conditions there, but a lower standard of living does not constitute extreme hardship.

The Applicant asserts that her spouse has psychological and health conditions and is at risk of diabetes because of his family history, that he has a history of heart issues, and that he requires extensive dental work, which he would be unable to afford in Mexico. The psychological assessment opines that the spouse will be unable to get state-funded medical care in Mexico because he is not a citizen, so he would have to pay for the extensive dental and medical care he potentially would need. The assessment indicates that the spouse has a history of heart problems caused by lead exposure, dental problems, and a foot injury from a work accident. However, no medical documentation has been submitted to the record concerning these medical conditions. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Further, the record does not establish that the

Applicant's spouse would require medical and therapeutic services if he relocated with the Applicant.

On appeal, the Applicant asserts that her spouse's son from a previous relationship depends on him for financial support and that in Mexico the spouse would be unable to maintain relations as the son's mother likely would not relinquish custody or let him travel. The psychological assessment states that the spouse pays $395 a month child support, although he had not seen his son in more than a year at the time of the assessment, which is dated April 3, 2015. The assessment states that the spouse indicates his fear that the mother of his son will not be able to support herself if he were in Mexico and unable to continue paying child support, and it also states that the spouse's son is covered by the spouse's health insurance. However, the record contains no information or documentary evidence about the spouse's son to establish his age, his relationship with the spouse, or any financial assistance the spouse provides him.

Here we find that the record does not establish that the Applicant's spouse would suffer extreme hardship were he to relocate to reside with the Applicant due to her inadmissibility.

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, would 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 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. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of A-M-F-*, ID# 16575 (AAO Aug. 30, 2016)