U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-T-S-

DATE: JAN. 28, 2016

APPEAL OF ST. PAUL FIELD OFFICE DECISION

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

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

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful 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.

In a decision dated November 25, 2014, the Director concluded that the Applicant had not established that the bar to her admission would impose extreme hardship on her U.S. citizen spouse and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant asserts that she is not inadmissible under section 212(a)(6)(C)(i) of the Act because she did not willfully make a material misrepresentation. Alternatively, she asserts that her spouse will suffer extreme hardship if her application is denied.

The record includes, but is not limited to: briefs, excerpts of Philippine law, declarations of the Applicant and her spouse, financial records, photographs, medical and school records, identity and relationship documents, and articles about the Philippines. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> 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.

The record reflects that the Applicant initially entered the United States on May 16, 2012 as a B2 visitor. The Applicant met and started dating her current spouse in June 2012. During her adjustment of status interview on September 5, 2013, she stated that she moved in with her spouse

"Pretty much after I came back from in Sept." The record indicates she was referring to September 2012. The Applicant initiated marriage dissolution proceedings in Minnesota on 2012; she departed the United States on November 14, 2012; and she served a summons and petition on her first spouse on November 20, 2012 in the Philippines. The interview notes also include a statement where she indicates that she planned to return to live in the United States. In addition, there was some discussion of marriage during her first time in the United States per her spouse's interview notes. The Applicant returned to the United States as a B2 visitor on December 30, 2012, and brought her son with her on this date. During her reentry, a Customs and Border Patrol (CBP) officer questioned the Applicant. The Applicant told the CBP Officer that she would be staying with her sister and taking her son to visit and She stated that if she needed money, her spouse would send it to her. Based on her statements, she was admitted into the United States. The Applicant and her spouse state that the Applicant stayed with him when she entered on December 30, 2012. The record further reflects that on 2013, the Applicant's divorce became final and she married her current spouse on 2013.

The Applicant claims that she did not share any false information with a government officer. The Applicant asserts that although she and her spouse had touched on the subject of marriage before she returned to the Philippines, they were not seriously planning to marry. She further asserts that she intended to stay in the United States for only six months then return again to the Philippines. She submits a copy of her roundtrip plane ticket. The Applicant asserts that the CBP officer did not record the entirety of her responses to his questions and in some instances he erred. The officer's contemporaneous notes are sufficiently explicit to establish how the Applicant responded to the officer's questions. The Applicant asserts that when her then boyfriend met her on December 30, 2012, he suggested that she and her son stay with him and she agreed. On appeal, the Applicant's spouse states that when he picked up the Applicant and her son at the airport, he was so overwhelmed by feelings of happiness and comfort that he suggested that the Applicant and her son stay with him. When considering the facts and timeline of this case, we find by the preponderance of the evidence that the Applicant misrepresented herself when she claimed to a CBP officer that she was intending to stay with her sister and visit tourist attractions as part of a visit to the United States.

The Applicant asserts that she did not make a material misrepresentation. 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 (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).

The Applicant's misrepresentation that she was intending to stay with her sister and visit tourist attractions as part of a visit to the United States blocked off a line of inquiry which may have resulted in a finding of inadmissibility that she was an intending immigrant under section 212(a)(7)(A)(i)(I) of the Act. If she told the CBP officer that she was going to stay with her U.S. citizen boyfriend, more questioning may have been done and relevant facts such as when they started dating, her current marital status, whether and when she filed for divorce, whether she was living with him on her first trip, etc. may have been brought up leading to an intending immigrant finding. In addition, based on the true facts, the Applicant would be inadmissible as an intending immigrant under section 212(a)(7)(A)(i)(I) of the Act.

The Applicant also asserts that she did not willfully misrepresent herself. 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). We are unable to find that an applicant is inadmissible for making a willful misrepresentation of a material fact without "clear, unequivocal, and convincing evidence." *See Kungys v. United States*, 485 U.S. 759, 771-72 (1988).

The relevant facts, as discussed above, establish that the Applicant willfully misrepresented herself to a CBP officer. As such, the Applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for procuring admission to the United States by willful misrepresentation of a material fact. .

Section 212(i)(1) of the Act provides a waiver for fraud and material misrepresentation. That section, in pertinent part, states that:

> an alien 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 . . . that the refusal of admission . . . 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.

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

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), but hardship "need not be unique to be extreme." *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996). 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); *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).

We first consider whether the Applicant's spouse would suffer extreme hardship if he relocated with her to the Philippines. The Applicant's spouse is a 35-year old native of the United States. He has no relatives in the Philippines and is close to his parents. In his affidavit, he asserts that he and the Applicant hope to have children of their own. The record reflects that the Applicant is currently pregnant.

The Applicant states that her spouse could not obtain a spousal visa to accompany her to the Philippines because their marriage would not be recognized. She states that her divorce would not be recognized so she could be prosecuted for adultery and bigamy given her present marriage. The record includes information on the inability to obtain a divorce in the Philippines; the effects of a divorce obtained abroad on the marital status of a Filipino citizen; and bigamy and adultery in the Philippines. The Applicant's spouse states that he could obtain visitor's visas to travel to the Philippines but that the cost would be prohibitive. The record reflects that the Applicant's spouse has invested in a limousine and has become self-employed in the United States. Both the Applicant and her spouse express concern about the impact of relocation upon the Applicant's permanent resident son. The Applicant's spouse discusses his closeness to his stepson; his stepson's integration into the United States; and the loss of opportunities for him in the Philippines.

The Applicant's spouse asserts that there are safety issues in the Philippines, including violence, natural disasters, and the risk of the Applicant being abused by her ex-spouse. The record includes

articles on human rights issues, natural disasters, and safety issues in the Philippines. The Applicant's spouse also asserts that he plans to return to college to obtain his associate's degree.

The record contains sufficient evidence to show that the Applicant's marriage to her spouse would not be recognized in the Philippines and that the Applicant could face criminal prosecution and jail time for bigamy and adultery. The record reflects that he could not obtain an immigrant visa as the spouse of a Filipino citizen. The record reflects that the Applicant's spouse would not be able to relocate to the Philippines permanently. Furthermore, we note that the Applicant's spouse has lived his entire life in the United States and would suffer emotional hardship as the result of separation from his parents and extended family and friends. The record does not reflect that he has any ties to the Philippines. In addition, he would experience hardship based on hardship to his stepson and we also note his concern for the Applicant's safety. Furthermore, if he was able to relocate, he would lose his investment in his limousine business. Lastly, we note the loss of educational opportunities for the Applicant's spouse, and the general human rights issues and safety issues in the Philippines. When considered in the aggregate, we find that the evidence of the record is sufficient to demonstrate that the Applicant's U.S. citizen spouse would suffer extreme hardship if he were to relocate to the Philippines with her.

We will next address whether the Applicant has established that separation would cause extreme hardship to her spouse. The Applicant's spouse states that he needs the Applicant's financial support to pay for their expenses. He explains that he is now self-employed as a driver for and and that he purchased a limousine. He states that their monthly expenses in the amount of $4,660 exceed his $2,000 monthly income. He states that the Applicant worked for a time and contributed but that her work authorization has expired so that they are now living on substantially less income. The Applicant states that her earning potential is far less in the Philippines. The record includes a list of their monthly expenses and several bills, some of which have past due balances and an overdraft fee. The record includes evidence of the Applicant's income in the United States.

The Applicant's spouse provides significant detail on his relationship with the Applicant, and their closeness to each other. The Applicant's spouse further states that if he is separated from the Applicant, he would have to raise his stepson alone and that the cost of aftercare is prohibitive. He states that it would be very challenging to raise his stepson alone, and that he fears that his stepson would feel abandoned. In the alternative, he mentions that his stepson would return with the Applicant to the Philippines. The Applicant's spouse states that he has become close to his stepson and fears that if his stepson suffers emotionally, he will too. The Applicant's spouse state that he would face emotional distress if the Applicant returned to the Philippines alone and was at the mercy of her abusive ex-husband. He is worried that the Applicant may be criminally prosecuted for bigamy and adultery. Both the Applicant and her spouse assert that separation would thwart their desire to have children together.

The record reflects that the Applicant's spouse would experience emotional hardship without the Applicant and in worrying about her in the Philippines. The evidence in the record corroborates the Applicant's concerns about criminal prosecution and the Applicant's physical safety vis-à-vis her

former spouse. The evidence submitted in support of his financial concerns indicates that the Applicant's spouse does not earn enough income to permit him to travel to the Philippines or to pay for his stepson's aftercare. The record reflects that he would experience financial hardship without the Applicant. Lastly, he would either be separated from his stepson or would be raising him without the Applicant. When considered in the aggregate, we find that the evidence of the record is sufficient to demonstrate that the Applicant's U.S. citizen spouse would suffer extreme hardship if they were separated.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant 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 an 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 the alien began his 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 and service to 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.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship to the Applicant's U.S. citizen spouse; her lawful permanent resident child, her lack of criminal activity, and her favorable employment history. The unfavorable factor in this matter is the Applicant's misrepresentation. We find that the favorable factors in the Applicant's case outweigh the unfavorable factor and a favorable exercise of discretion is warranted.

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 L-T-S-*, ID# 13601 (AAO Jan. 28, 2016)