U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-L-T-

DATE: JULY 7, 2016

APPEAL OF LOS ANGELES, CALIFORNIA 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 the ground 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 to lawful permanent resident (LPR) status 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 USCIS Field Office Director, Los Angeles, California, denied the application. The Director concluded that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, specifically for attempting to procure admission to the United States by falsely representing herself as a lawful permanent resident. 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 submits additional evidence and claims that the Director erred in not finding that her spouse's hardship would be extreme.

Upon *de novo* review, we will sustain the appeal. The evidence, including the additional evidence submitted on appeal, considered both individually and cumulatively, establishes that the Applicant's spouse would experience extreme hardship if the Applicant is denied admission. The record also demonstrates that the Applicant merits a waiver as a matter of discretion.

I. LAW

The Applicant is seeking to adjust to LPR status and has been found inadmissible for a fraud or misrepresentation. Specifically, the record establishes that the Applicant attempted to enter the United States by presenting an I-551, Lawful Permanent Resident card that did not belong to her.

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. On appeal, the Applicant argues that her spouse would experience extreme hardship if the waiver is denied, whether he remained in the United States without her or accompanied her to El Salvador. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.

A. 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 her U.S. citizen spouse. With the Form I-601, the Applicant submitted a brief, statements from herself and her spouse, a psychological evaluation of the Applicant's spouse, financial documentation, school records for the spouse's son, medical records for the spouse's mother, country information for El Salvador, family photographs, documentation establishing the Applicant's employment when she lived in El Salvador, and

biographic documents. On appeal the Applicant submits a brief and additional information about country conditions. We have considered all the evidence in the record.

The Applicant claims that her spouse will suffer emotional and financial hardship were he to remain in the United States while she relocates abroad. The Applicant contends that her spouse has an anxiety disorder and has suffered two failed relationships with negative experiences and cites a psychological evaluation of her spouse indicating that he will be emotionally devastated if separated from her. The Applicant states that they have a strong bond and that she has changed his outlook on life. In his statement the Applicant's spouse describes his previous failed relationships, including how the mother of his first two children would not allow him to see them and that his ex-wife had a gambling addiction. The spouse states that without the Applicant he fears going back to being lonely and depressed, and that the Applicant provides him with moral support and has a positive impact on his son, of whom he has custody. The Applicant maintains that their daughter, born in and her spouse's son, born in will also suffer being separated from her which will then cause her spouse to suffer more. She further asserts that the family is dependent on her spouse's income so she can care for their children and contends that he would need to pay for child care without her, making an added expense. She contends that her spouse would also have the added expense of supporting her in El Salvador, thereby increasing his financial and emotional stress. The Applicant and her spouse also state that the spouse would fear for the Applicant's safety in El Salvador because she had previously been threatened by gangs when she was a teacher in El Salvador.

A November 2014 evaluation of the Applicant's spouse by a psychologist surmises that it would be difficult for the spouse to work and provide care for the children without the Applicant, and notes that the spouse had spent time in therapy as part of a custody battle for his son. The evaluation describes the spouse as having exaggerated worry because of past memories of loss of family, is easily depressed and worried, and faces overwhelming anxiety. It diagnoses him with an anxiety disorder and further describes him as having an overriding need to retain intimacy with others and to seek security. The evaluation indicates that the spouse scores low in self-esteem testing and doubts his self-worth with the possibility of losing the Applicant to a country with such crime.

Regarding the financial hardship referenced, the record contains financial documents that include bills, mortgage information, and employment and tax information for the Applicant's spouse showing he earned about $33,000 in 2013.

Here a review of the documentation in the record, when considered in its totality, establishes that the Applicant's U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while the Applicant relocates abroad. The record shows that the spouse is emotionally dependent on the Applicant. Further, the record establishes the Applicant's spouse's role as financial provider for the family and were his wife to relocate abroad, having to assume the care of his children and provide financially would cause extreme hardship.

In regard to relocating abroad to reside with the Applicant, the Applicant and her spouse contend that the Applicant's spouse has resided since the 1980s in the United States, where he has close

immediate and extended family, received his education, is employed, and has his support system. The spouse states that even though he and the Applicant are both from Spanish-speaking countries the customs, culture, and way of life of El Salvador, the Applicant's native country, and Mexico, where the spouse is from, are different. The Applicant states that her spouse's son does well in school but that he does not speak or read Spanish so if he resided in El Salvador he cannot compete and it would devastate his academic progress, which will impact her spouse. In support of this contention she cites the son's school records and news reports of substandard education in El Salvador. The Applicant further maintains that her spouse owns his home and has medical insurance in the United States so would suffer a lower standard of living in El Salvador. The spouse states that he cannot survive financially in El Salvador, where the Applicant is from a small village far from stores and with no available medical treatment. He states that he fears his children's future would be in jeopardy if they relocated, which will cause him to suffer. The spouse further contends that he cannot abandon his elderly parents with their health ailments and that his mother requires constant care. The Applicant submitted to the record news accounts of violence in El Salvador. Further, the U.S. Department of State warns that crime and violence levels in El Salvador remain critically high and that Salvadoran gangs have escalated their tactics.

The record shows that the spouse has resided in the United States since the 1980s, becoming a U.S. citizen in 1999. The record evidences that he has extensive family connections here and none in El Salvador, his spouse's native country, as he was born in Mexico. By relocating abroad to reside with the Applicant, the spouse would be separated from his family, lose his employment and possibly his home, and he would be fearful of the economic and physical safety and well-being of his family, thereby causing him extreme hardship.

B. Discretion

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-Moralez,* 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 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 positive factors in this case are the hardship to the Applicant's spouse and children if the Applicant is unable to reside in the United States, the Applicant's community ties, the payment of taxes, home ownership, and the Applicant's apparent lack of criminal record. The negative factors in this case are the Applicant's attempt to procure entry to the United States by fraud or misrepresentation, as discussed in detail above, the Applicant's placement in removal proceedings, and periods of unlawful presence in the United States. We find that the positive factors outweigh the negative factors in this case, and that a favorable exercise of discretion is warranted.

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 D-L-T-*, ID# 17315 (AAO July 7, 2016)