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

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

MATTER OF D-A-

DATE: MAY 11, 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 Ghana, 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, Chicago, Illinois, denied the application. The Director concluded the Applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having sought admission to the United States with a false passport and concluded that the Applicant had not established extreme hardship to a qualifying relative. The Applicant appealed to this office, which concluded that she had not established extreme hardship to a qualifying relative and dismissed the appeal.

The matter is now before us on motion to reopen and reconsider. In the motion, the Applicant submits additional evidence and claims that USCIS failed to consider all the relevant evidence of hardships the Applicant's spouse would experience if she were removed. The Applicant explains that her spouse would become a single parent if she were removed, experiencing extreme hardship due to becoming a single parent earning the sole income for their household and having to care for two children, one of whom has medical conditions.

We will deny the motion.

I. LAW

The Applicant is seeking to adjust status to lawful permanent residence and has been found inadmissible for fraud or misrepresentation, specifically having attempted to enter the United States by presenting a passport and B1/B2 visitor visa in the name of another person, under whose name she was ordered excluded from the United States on [REDACTED] 1996. 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 on appeal are whether the Applicant has established extreme hardship to a qualifying relative and whether the Applicant warrants a favorable exercise of discretion. The Applicant claims that USCIS failed to consider all the relevant evidence of hardships the Applicant's spouse would

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experience if she were removed. The Applicant explains that her spouse would become a single parent if she were removed, experiencing extreme psychological, financial and physical hardships due to earning the sole income for their household and having to care for two children, one of whom has medical conditions. In support of these claims the Applicant has submitted additional statements from her spouse and their pastor as well as financial documents and an estimated itinerary cost for travel to Ghana.

We find the evidence in the record of proceedings to support a determination that a qualifying relative will experience extreme hardship due to the Applicant's inadmissibility. However, based on the adverse factors in this case, we decline to exercise favorable discretion, and the Applicant's motion will be denied.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. Specifically, the record indicates that the Applicant attempted to enter the United States by presenting a passport in the name of another person. She was ordered excluded in absentia under this false name on [REDACTED] 1996, after she failed to appear at her hearing before an immigration judge. On [REDACTED] 1997, using her real name, the Applicant was granted lawful permanent resident status under Diversity Visa category 6 as a diversity immigrant. On her adjustment of status application, filed on October 31, 1996, the applicant misrepresented her date, place and manner of entry into the United States, failing to reveal her prior attempted entry with a fraudulent document, which would have rendered her ineligible for adjustment of status, and her exclusion order. The Applicant provided the same false information about her manner of entry on her Application for Naturalization, Form N-400, and during her naturalization interview on February 23, 2004, the applicant initially denied having entered the United States using another name or having been detained by immigration officials until she was confronted with the fraudulent passport. Once confronted with the evidence of fraud, she then claimed that she had fled Ghana for a better life because her parents had died, but documentation on the record indicates they were both alive at the time. The Applicant does not contest the finding of inadmissibility on motion.

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 her spouse.

We previously found that the Applicant's spouse would experience extreme hardship upon relocation. Upon examination of the record and the evidence supporting the Applicant's claims of hardship, we find no basis to disturb these findings and conclude that the Applicant has established extreme hardship to a qualifying relative as required for a waiver under section 212(i) of the Act. We will now address whether the Applicant merits a favorable exercise of discretion.

C. 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-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 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 are the Applicant’s attempt to procure admission to the United States by using a fraudulent passport and visa, her failure to appear at her exclusion hearing and order of exclusion in absentia, and subsequent misrepresentations when applying for adjustment of status under the diversity visa program and for naturalization. The Applicant received lawful permanent resident status after filing these forms with false information when she would have been ineligible because she was inadmissible for the fraudulent entry attempt. She provided the same false information when applying for naturalization, and in a sworn statement taken during a 2004 naturalization interview, she continued to deny that she had attempted to enter the United States under a false name until she was confronted with the evidence revealing her fraud. She then claimed that she had fled Ghana after her parents had died when documentation on the record, including the Applicant’s 1996 Form G-325A listing her father as residing in Georgia and a 2006 declaration from her mother, indicates that both of her parents were still alive. In 2009, after the Applicant was found deportable and placed in removal proceedings, the immigration judge denied her applications for asylum, cancellation of removal, and a discretionary waiver under section 237(a)(1)(H) of the Act.

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The immigration judge granted her voluntary departure, but she did not depart as ordered by the immigration judge. In addition to her pattern of misrepresentation in her immigration proceedings, the record contains unexplained inconsistencies. The Applicant claimed in support of her waiver application that she and her spouse had been living together since 1997 and married in 2008. However, the record indicates that the Applicant's spouse was married to another person from 2005 to 2008, and the Applicant had not explained this inconsistency.

The positive factors in this case include the presence of the Applicant's three children in the United States, two of whom still live with her and her spouse, and the presence of her spouse. Another positive factor in this case includes the extreme hardship the Applicant's spouse would experience due to her inadmissibility, as well as hardship to the Applicant herself and her children, who are now [REDACTED] and [REDACTED] years old, if she is denied adjustment of status. Further, the Applicant has resided in the United States for twenty years and does not appear to have any criminal record during her residence here.

When we balance the adverse factors with the positive factors in this case we find that the adverse factors, in particular the Applicant's repeated material misrepresentations to immigration officials, outweigh the positive factors, and we will decline to exercise favorable 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 deny the motion.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of D-A-*, ID# 15917 (AAO May 11, 2016)