



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

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

MATTER OF V-D-P-

DATE: OCT. 3, 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) § 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, concluding that the Applicant did not establish that she is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i); that she entered the United States without inspection and is inadmissible under 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i); and that no waiver is available for inadmissibility under 212(a)(6)(A)(i) of the Act. We agreed with the Director and dismissed the Applicant's appeal.

The matter is now before us on a motion to reopen. The Applicant submits additional evidence and asserts that she was inspected and admitted to the United States with a fraudulent passport, she is inadmissible for fraud or misrepresentation, and her spouse would experience extreme hardship.

We will deny the motion to reopen.

**I. LAW**

The Applicant is seeking to adjust status to that of a lawful permanent resident and has been found inadmissible for being present in the United States without being admitted or paroled. The Applicant asserts that she is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation.

Section 212(a)(6)(A)(i) of the Act renders inadmissible any foreign national who is present in the United States without being admitted or paroled, and it provides exceptions for certain battered women and children.

(b)(6)

*Matter of V-D-P-*

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 U.S. citizen or lawful permanent resident spouse or parent of the foreign national.

## II. ANALYSIS

The issues on appeal are whether the Applicant is inadmissible pursuant to section 212(a)(6)(A)(i) of the Act or section 212(a)(6)(C)(i) of the Act for misrepresentation, and, if she is inadmissible for misrepresentation, whether she has established extreme hardship to a qualifying relative. The Applicant claims on motion that she presented a fraudulent passport to procure admission to the United States in 1992 and that she did not enter the United States without inspection. She further claims that her spouse will experience extreme hardship due to his medical issues.

The record does not reflect that the Applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact when procuring admission to the United States, and therefore she is not required to establish that her spouse will experience extreme hardship if she is removed from the United States.

However, the record reflects that the Applicant is inadmissible under section 212(a)(6)(A)(i) of the Act for being present in the United States without being admitted or paroled, and she does not qualify for an exception of this ground of inadmissibility. The motion to reopen will be denied.

### A. Inadmissibility

On appeal, the Applicant claimed that she entered the United States in January 1992, under an assumed name at the [REDACTED] Florida, [REDACTED] that she paid someone for the visitor's visa and a photo-substituted passport; and someone took the passport and Form I-94, Arrival/Departure Record, from her after she went through the immigration inspection process. In her February 2015 sworn statement, she was asked how she was able to get copies of the passport pages if the passport was taken from her at the airport and she stated, "Because, I supposed [sic] to pay the rest of the money. I had to give me [sic] the paper, and then I gave them the rest of the money." We found that the Applicant did not provide the Form I-94, original passport, and original visa with which she claims she was admitted to the United States; her response did not establish how she was able to obtain copies of the passport pages; no government records show that the Applicant was inspected and admitted to the United States in January 1992 under her name or under the assumed name; and no other evidence shows that the Applicant was inspected and admitted to the United States with a visitor's visa or in any other legal status. On appeal, the Applicant submitted a copy of the visa that she claims she used to enter the United States and a partial copy of the passport that she claims she

(b)(6)

*Matter of V-D-P-*

used to enter the United States. On motion, she submits the same entry documents, an updated statement, and a brief.

On motion, the Applicant provides more detail of her claimed entry to the United States. She states that she obtained the fraudulent passport and visa from an individual named [REDACTED] for a fee of \$750; when she exited the [REDACTED] she turned the documents over to two individuals who were waiting to take them; she owed them more money and for 3 months she received calls demanding the money; she told an individual named [REDACTED] that if he wanted the balance, he would have to give her a copy of her entry documents; after 6 months she was able to pay the balance of her debt; and [REDACTED] provided her a copy of the documents she used to enter the United States.

The Applicant also provides more information regarding her adjustment of status interview. She states that she has a thick Jamaican accent and the interviewing officer had an extremely difficult time understating her responses; she, her husband, and her attorney had to correct the officer when the officer inaccurately repeated the Applicant's answers to her; and the taped recording of the interview reflects the language issues. She asserts that she told the officer that she owed a balance and when she was contacted demanding the money, she informed them that she would not pay the balance unless they provided her a copy of her entry documents. The record includes a Freedom of Information Act (FOIA) request for evidence of the Applicant's admission.

The Applicant cites to asylum case law as support for her assertion that when testimony is the only available evidence, it can suffice when believable, consistent, and sufficiently detailed. The case law, however, discusses the standard of proof required to establish a fear of persecution under section 208 of the Act. The Applicant also asserts that the preponderance of the evidence standards applies to factual determinations. We agree and will apply this standard in making factual determinations. The "preponderance of the evidence" standard requires that the record demonstrate that the Applicant's claim is "probably true," based on the specific facts of his case. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). The Applicant also cites to the Federal Rule of Evidence 1004, to support her assertion that the absence of an original document can be forgiven if explained. The Federal Rules of Evidence, however, relate to proceedings in federal courts, which is not the case here.

The issue before us is whether the Applicant has established that she was inspected and admitted to the United States with the aforementioned passport and visa. As mentioned in our decision on appeal, the Applicant has not provided the Form I-94, original passport, and original visa with which she claims she was admitted to the United States; and no evidence in government records establishes that the Applicant was inspected and admitted to the United States in January 1992, under her name or under the assumed name. The evidence she presented does not show that she more likely than not presented herself for inspection. She has not provided the original passport. The Applicant's photograph could have been placed into the passport after the true passport owner's entry, and her explanation of why the person who purportedly arranged the entry provided her a copy of the fraudulent passport but not the Form I-94 is not convincing. In addition, the Applicant claims that she was admitted in January 1992. The nonimmigrant visa in the passport is valid until August 1992, yet the visa was cancelled without prejudice at some point. The Applicant does not explain

the circumstances under which the visa was cancelled after she was purportedly admitted to the United States. The Applicant has not presented a copy of a plane ticket or other document related to her journey to the United States in 1992. In addition, the record includes a Form I-130, Petition for Alien Relative, dated August 17, 2004, signed by her spouse. It reflects that she arrived in the United States as “EWI,” which is a common acronym used in U.S. immigration matters that means “entered without inspection.” Although she now provides a more detailed statement of how she obtained copies of her claimed entry documents and of her interview, the new information does not establish by the preponderance of the evidence that she was inspected and admitted to the United States in January 1992.

The record includes no other evidence that the Applicant was inspected and admitted to the United States with a visitor’s visa or in any other legal status. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is “self-serving.” *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citations omitted). However, the Board has also held that the introduction of corroborative testimonial and documentary evidence, where available, is not only encouraged, but required. *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the affected party to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). We find that the Applicant has not established that she was admitted to the United States. As such, she is inadmissible to the United States pursuant to section 212(a)(6)(A)(i) of the Act. There is no waiver for inadmissibility under section 212(a)(6)(A)(i) of the Act and the exception in section 212(a)(6)(A)(ii) of the Act does not apply. As the Applicant has not demonstrated that she was admitted with a fraudulently obtained passport, we also find that she is not inadmissible under section 212(a)(6)(C)(i) of the Act, for willfully misrepresenting material facts to procure admission to the United States, and therefore, because she does not require a waiver under section 212(i) of the Act, her hardship and discretionary claims will not be addressed.

### 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. Here, the Applicant is not required to file a waiver for fraud or misrepresentation as she is not inadmissible under section 212(a)(6)(C)(i) of the Act.

**ORDER:** The motion to reopen is denied.

Cite as *Matter of V-D-P-*, ID# 122924 (AAO Oct. 3, 2016)