U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-S-

DATE: DEC. 27, 2017

APPEAL OF LAWRENCE, MASSACHUSETTS FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Ghana currently residing in the United States, has applied to adjust status to that of a lawful permanent resident. A foreign national seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). 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 Director of the Lawrence, Massachusetts, Field Office found the Applicant inadmissible for fraud or misrepresentation and denied the waiver application, concluding that the record did not establish, as required, that denial of the waiver would result in extreme hardship to the Applicant's spouse, the only qualifying relative.

On appeal, the Applicant submits additional evidence and asserts that the Director erred in finding her inadmissible and further erred in finding that her spouse's hardship would not be extreme.[1]

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

I. LAW

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, is inadmissible. Section 212(a)(6)(C)(i) of the Act.

[1] Upon our initial review of the appeal, we issued a request for evidence (RFE) regarding the Applicant's son's claimed autism diagnosis. The Applicant has responded to our RFE with additional evidence concerning her son's condition as well as new evidence relating to her hardship claim. We have incorporated this additional evidence into the record and considered it in rendering our decision.

There is a discretionary waiver of this inadmissibility under section 212(i) of the Act 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).

Once the foreign national demonstrates the existence of the required hardship, he or she must then show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. When exercising our discretion, we "balance the adverse factors evidencing a [foreign national's] undesirability as a permanent resident with the social and humane considerations presented on the [foreign national's] behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country") (citations omitted)). *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 299 (BIA 1996).

II. ANALYSIS

The issues presented on appeal are whether the Applicant is inadmissible for fraud or misrepresentation and, if so, whether the Applicant merits a waiver of inadmissibility. To establish eligibility for the waiver, she must show that denial of the waiver application would result in extreme hardship to her U.S. citizen spouse and, if so, that she merits a favorable exercise of discretion.

The record includes but is not limited to: statements from the Applicant, her spouse, and acquaintances; psychological and medical records; receipts, statements, and financial records; tax

and employment records; birth and marriage certificates; divorce records; lease agreements; school records; identity documents; medical records and articles; letters of support; documents related to her previous immigration applications and proceedings; reports about conditions in Ghana; and photographs.

We have considered all the evidence in the record, and we find that the Applicant is inadmissible for fraud or misrepresentation. However, we also find that denial of the waiver of inadmissibility would result in extreme hardship to the Applicant's spouse, and that the Applicant merits a waiver as a matter of discretion.

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 for statements regarding her previous marriage. In June 2004, during an interview in support of her application to adjust status to that of a lawful permanent resident, the Applicant testified that she was residing with her then-petitioning spouse, A-H-. However, in November 2012, she signed an affidavit stating that she separated from, and no longer resided with, A-H- in February 2004, four months before her adjustment interview. Based on the discrepant statements regarding her cohabitation with her prior spouse, the Director determined that the Applicant was inadmissible for fraud or misrepresentation.

To find inadmissibility under section 212(a)(6)(C)(i) of the Act, there must be evidence in the record such that a reasonable person would find that an applicant used fraud or willfully misrepresented a material fact in an attempt to obtain a visa, admission into the United States, or any other immigration benefit. 8 USCIS Policy Manual J.3(A)(1), https://www.uscis.gov/policymanual. A willful misrepresentation does not require an intent to deceive, but instead requires only knowledge that the representation is false. *Parlak v. Holder*, 578 F.3d 457 (6th Cir. 2009).

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. *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); *Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979).

The Applicant asserts that she is not inadmissible for fraud or misrepresentation because her 2012 affidavit inadvertently misstated the date of separation from her prior spouse, and therefore the statement was not made willfully. She claims that this date is incorrect and must have resulted from a typographical error by the attorney who represented her at that time. She also claims that she was

living with A-H- at the time of her 2004 interview, and thus her testimony was not a misrepresentation.

The Act makes clear that a foreign national seeking admission must establish admissibility "clearly and beyond doubt." Sections 235(b)(2)(A) and 240(c)(2)(A) of the Act. The same is true for demonstrating admissibility in the context of an application for adjustment of status. *Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008); *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008); *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). Although the Applicant asserts that the 2012 affidavit contained incorrect information due to an error by her attorney, she has not provided sufficient evidence or explanation to establish this claimed fact. She offers two explanations in her statement, stating that it must have been a typographical error, but also indicating that the attorney made an innocent mistake made trying to recollect information from eight years ago.

As the record reflects that the Applicant has made inconsistent statements regarding the same set of facts, the Applicant must resolve these statements with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the Applicant has not clearly explained when she separated from her prior spouse (including periods of separation, if any) or offered sufficient objective evidence to show that she resided with her previous spouse at the time of her June 2004 interview. She has provided documents such as a lease agreement, bills, and account statements in both her and her prior spouse's names during 2004 and later. However, the record also includes letters from herself, her uncle, and acquaintances indicating that she lived separate from A-H- starting some time in 2004 until moving in with her present spouse in 2010. Given the inconsistent evidence, the accounts in her and her prior spouse's names are not enough to establish that they still resided together in June 2004.

In sum, the Applicant's signed affidavit stating that she separated from her spouse in February 2004 is not rebutted by her unsupported claims that the affidavit is unintentionally incorrect.[2] She has not provided an adequate explanation for why she signed the affidavit without reviewing its contents, even though clarification of the facts surrounding her marriage and separation were a key purpose for producing the affidavit. In light of the evidence that she was separated from her prior spouse in 2004, and the lack of probative evidence that she resided with her prior spouse in June 2004, we find sufficient reason to believe that her June 2004 testimony was a misrepresentation. As the Applicant provided the testimony herself, concerning a matter of which she would have direct personal knowledge—whether she lived with A-H-—we find that the misrepresentation was willfully made. As she made the misrepresentation during an interview to adjust status based on her marriage to A-H-, we find that the misrepresentation was made in an attempt to obtain an immigration benefit.

[2] The Applicant asserts that her signature on the affidavit should not affect her credibility because this was an isolated incident and not a pattern of repeated misstatements. However, a finding of inadmissibility for misrepresentation under section 212(a)(6)(C)(i) of the Act does not require a pattern of misstatements; a single instance may suffice.

The Applicant has also asserted that we cannot find her inadmissible for misrepresentations related to her prior marriage in light of the decision by the Board of Immigration Appeals (Board) granting her current spouse's visa petition on her behalf. The Board found that the record did not establish that she *entered into* her marriage to A-H- for the purpose of evading immigration laws, and therefore the approval of her current spouse's petition was not barred by section 204(c) of the Act. But, the Board's determination does not preclude a finding that the Applicant misrepresented facts regarding developments *subsequent* to her marriage, including her eventual separation from A-H-.

For the above reasons, we find the Applicant is inadmissible for misrepresentation under section 212(a)(6)(C)(i) of the Act and therefore requires a waiver.

B. Hardship

In this case, the Applicant must demonstrate that denial of the application would result in extreme hardship to her U.S. citizen spouse. The record reflects that her spouse is a native of Ghana who arrived in the United States in 1998 and became a U.S. citizen in 2012. The Applicant and her spouse have a son born in and they were married in 2012. As he is not a qualifying relative for the purposes of a waiver, hardship to the Applicant's son will be considered only insofar as it will impact her spouse. The Applicant claims that her spouse would experience emotional and financial hardship whether he remains separated from her in the United States or relocates with her to Ghana.

The Applicant claims that if she relocates to Ghana and her spouse and son remain in the United States, then her spouse will face emotional or psychological hardship due to the loss of her companionship, her emotional support, and her assistance caring for their year old son, who has autism.

In his affidavit, the Applicant's spouse describes the emotional difficulties he currently experiences as a result of the denial of the Applicant's waiver. In his affidavit and in his consultation with a licensed independent clinical social worker (LICSW), the Applicant's spouse describes symptoms including depressed mood, insomnia and nightmares, constant worry, excessive guilt, suicidal thoughts, psychomotor retardation, fatigue, difficulty concentrating, and irritability. Based on these and other reported symptoms, the Applicant's spouse was diagnosed with persistent depressive disorder and generalized anxiety disorder. The assessment by the LISCW notes the circumstances and concerns described by the Applicant and her spouse, including their fears about their son and his special needs, their financial difficulties—the Applicant's spouse writes that he cannot afford counseling services—and their worries about adjusting to life in Ghana and coping with the loss of their connections in the United States. The Applicant and her spouse claim that, with her spouse's existing conditions of persistent depressive disorder and generalized anxiety disorder, the emotional impact would cause hardship beyond the normal consequences of separation.

Her spouse would face further hardship, the Applicant claims, as a result of caring for their son without her assistance. The Applicant submits medical, school, and psychological records showing

that their son has been diagnosed with autism and related developmental delays, for which he receives special services at his school. The Applicant states that, because of her son's condition, he requires intensive parental caretaking and support with schoolwork and behavior, and so he would face significant psychological hardship if separated from his mother; this hardship would, in turn, place an even greater burden on the Applicant's spouse, who would be solely responsible for providing for their son's special needs, in addition to seeking employment. Her son's doctor writes that he has made significant progress, but separation from his mother would constitute a "huge disruption" to his treatment. The son's school records reflect ongoing evaluations throughout his education. The records are consistent with the doctor's statement that he has made significant progress, but they also indicate that this progress occurred in connection with individualized plans implementing specialized services and accommodations. The records also reflect that the Applicant has been the primary point of contact for discussion and consent to her son's educational plans and that she takes him to his medical appointments and treatments.

Regarding financial hardship, the Applicant states that her spouse is currently unemployed and was receiving state unemployment benefits until they ceased in May 2017. He has also been pursuing a training program to drive trucks or tractors and continues to look for work. The Applicant has been the sole income earner since her spouse lost his job, and she makes approximately $37,000 annually as reflected by her tax and employment records. Even when her spouse was employed, her earnings constituted approximately half of the family's income, and so the loss of her wages would leave her spouse's income, at best, severely diminished. The Applicant also asserts that their savings are inadequate to support the family in the long term in her absence, and she would be unable to find employment in Ghana sufficient to support her family in the United States. In support of these claims, she submits a report showing that the median hourly wage in Ghana is 2.35 cedi, and the average work week is 54 hours. Further, Ghanaian workers without formal education, such as the Applicant, earn less than 1.50 cedi per hour. Based on the report and current exchange rates, the median weekly earnings in Ghana are approximately $28, while an uneducated worker similarly situated to the Applicant might expect to earn approximately $18 per week. In light of the limited or insufficient resources available to meet the family's regular expenses in the United States, the Applicant's spouse also claims that he would be unable to afford airfare and other costs associated with visiting the Applicant in Ghana, thus intensifying the emotional harm caused by the loss of her companionship.

The Applicant also states that her spouse would face extreme hardship if he relocated with her to Ghana due to poor social and economic conditions there and the emotional stress that would result.

The Applicant claims that neither she nor her spouse has family in Ghana who could assist them financially. Both of the Applicant's parents are deceased, her spouse's father is deceased, and his mother and their siblings are too poor to provide economic support. Further, the Applicant's spouse has a -year old U.S. citizen son from his prior marriage, and their relationship would suffer if the spouse returned to Ghana. The Applicant also states that her spouse and son would lose medical insurance if they move to Ghana, and that medical care there is limited in availability and inadequate in quality. She cites to U.S. Department of State reports warning travelers of limited medical

facilities, advising them to carry adequate supplies of medications, and describing risks of mosquito-borne illnesses. The Applicant claims her spouse, who suffers from chronic depression, generalized anxiety disorder, obesity, and hypertension, would face difficulties obtaining care for his medical and psychological conditions, and that further hardship would result from the impact of relocation on their son. The Applicant has submitted reports describing the poor quality of schools in Ghana, and in particular the lack of services available for children with special needs, such as her son. The Applicant's spouse also states that losing access to special accommodations and services would cause his son to regress, and this would contribute to his own anxiety, depression, and stress. Reports submitted by the Applicant reflect overall insufficient mental healthcare workers in Ghana, and insufficient mental health specialist services in Ghana, particularly for children and the learning disabled.

The record reflects that the Applicant's spouse has significant ties to the United States and, in light of his psychological conditions and his son's needs, he would experience significant emotional hardship if he relocated to Ghana. The record also reflects that the Applicant provides her spouse significant emotional and financial support, and that separation would require him to become the sole economic provider at a time when he is unemployed, and the sole caretaker for their child, who has special needs. Based on the cumulative effect of the aforementioned hardship factors, in combination with the normal results of separation from a spouse or relocation to another country, we find that the Applicant's spouse would experience extreme hardship if the Applicant's waiver is denied. In addition, the balancing of the positive equities in this case against the negative factors warrants the favorable exercise of our discretion. Accordingly, we withdraw the Director's decision, as the waiver application merits approval.

ORDER: The appeal is sustained.

Cite as *Matter of M-S-*, ID# 570861 (AAO Dec. 27, 2017)