U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-A-O-

DATE: MAY 3, 2016

APPEAL OF ST. LOUIS, MISSOURI, FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility for unlawful presence. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). 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 Applicant is the beneficiary of an approved self-petition, under the Violence Against Women Act (VAWA), as an abused spouse of a U.S. citizen and also seeks a waiver for entering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year. *See* section 212(a)(9)(C)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(iii). This discretionary waiver is available to VAWA self-petitioners where the removal, departure from the United States, reentry or attempted reentry into the United States is connected to the applicant's battering or subjection to extreme cruelty.

The Field Office Director, St. Louis, Missouri, denied the application. The Director concluded that the Applicant, a VAWA self-petitioner, did not establish that his entries without inspection into the United States after having accrued more than one year of unlawful presence in the United States were connected to the battery or extreme cruelty he experienced, as required for a waiver under section 212(a)(9)(C)(iii) of the Act.

The matter is now before us on appeal. On appeal, the Applicant claims the Director erred by failing to apply the "any credible evidence" and "mere connection" standards. Further, the Applicant claims that USCIS failed to consider the coercive nature of domestic violence. Lastly, the Applicant states the Director incorrectly required that he show a connection between the battering or extreme cruelty he suffered and all of his departure and reentries to the United States.

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

I. LAW

The Applicant has been found inadmissible for entering, and attempting to enter, the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year. Specifically, the Applicant entered the United States without inspection in 1999 and remained until October 2003. He entered the United States without inspection in January 2004, and in 2008 he again departed and reentered without inspection. Section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), provides, in pertinent part:

> Aliens Unlawfully Present After Previous Immigration Violations.-
>
> (i) In General
>
> Any alien who-
>
> (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
>
> (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,
>
> and who enters or attempts to reenter the United States without being admitted is inadmissible.

Certain individuals found inadmissible under section 212(a)(9)(C) of the Act may seek a waiver under section 212(a)(9)(C)(iii) of the Act. Section 212(a)(9)(C)(iii) provides, in pertinent part:

> (iii) Waiver -- The [Secretary] may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between--
>
> (I) the alien's battering or subjection to extreme cruelty; and
>
> (II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

The Applicant was also found inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(l)(II) for having accrued more than one year of unlawful presence. Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), provides, in pertinent parts:

> (i) In General
>
> Any alien (other than an alien lawfully admitted for permanent residence) who—
>
> . . . .

> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of Unlawful Presence

For purposes of this paragraph an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion for

> an immigrant who is the spouse or 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 to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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 extreme hardship to a qualifying relative is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

II. ANALYSIS

The issues on appeal are whether the Applicant has established that his departures, reentries, or attempted reentries in 2004 and 2008 were connected to the battering or extreme cruelty he experienced at the hands of his former spouse, and whether he must establish that all of his departures, reentries, or attempted reentries are connected to the abuse. The Applicant claims that, in order to satisfy the requirements of section 212(a)(9)(C)(iii) of the Act, he only has to show a connection between the battering or extreme cruelty he suffered and one of his reentries to the United States, not all of them. He further claims that his 2004 and 2008 reentries were both connected to the extreme cruelty and abusive behavior of his former spouse. In support of the appeal, the Applicant submits his affidavit, letters and an article from a social worker, a non-precedent AAO decision, and excerpts from a USCIS adjudicator's manual for overseas officers from 2009.

Although we find that the Applicant's reentry without inspection in 2008 was connected to the extreme cruelty he was experiencing, the evidence on the record does not establish a sufficient connection between the abuse and either his 2003 departure or reentry in 2004. In addition, he has not shown that establishing the required connection to only one of his reentries will suffice to make

him eligible for a waiver of inadmissibility under section 212(a)(9)(C)(iii) of the Act. The Applicant has thus not met his burden of proving eligibility for a waiver under section 212(a)(9)(C)(iii), and we find no purpose would be served in addressing whether he has established eligibility for a waiver under section 212(a)(9)(B)(v) for having accrued more than one year of unlawful presence.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(9)(C) of the Act for two entries and one attempt to enter into the United States without being admitted after having accrued unlawful presence in the United States for more than one year. Specifically, the Applicant entered the United States without inspection in 1999 and returned to Mexico in October 2003, accruing over one year of unlawful presence. Thereafter, in January 2004, the Applicant unsuccessfully attempted to reenter the United States without inspection and was returned to Mexico by U.S. Customs and Border Protection (CBP) and shortly thereafter, he successfully entered the United States without inspection. When he departed the United States in 2008 for his immigrant visa interview, he again incurred inadmissibility for unlawful presence accrued between his 2004 entry to and 2008 exit from the United States. After he was denied an immigrant visa, the Applicant again reentered the United States without inspection. The Applicant does not contest that he is inadmissible under section 212(a)(9)(C)(i)(I) for having reentered the United States without inspection after having accrued one year or more of unlawful presence.

B. Waiver

The Applicant states that he first met his now ex-spouse in 2003 and that during the time period when they were dating, his mother became sick and he visited her in Mexico. He explains making his October 2003 return to Mexico because he thought it might be his last chance to see his mother and also provide an opportunity for his parents to meet his former spouse before she and the Applicant married. The Applicant indicates that he made this visit to Mexico intending to return to the United States and marry his now ex-spouse. However, when he first attempted to reenter the United States after visiting his parents and introducing them to his future spouse, CBP officers stopped him at the border and turned him away. The Applicant states that, shortly after this failed attempt, he tried again to reenter the United States and succeeded in January 2004. He then began residing with his ex-spouse, she became pregnant in 2004, and they married in 2004. His affidavits claim that she was already manipulating him into returning to support her and her daughter from a previous marriage, and he states that she was using him financially and continued to do so after they married.

The record does not establish that either the Applicant's 2003 departure or attempted and successful reentries without inspection in January 2004 are connected to the battering or extreme cruelty he experienced. While the Applicant states that there were financial issues and the beginnings of manipulative behavior early in the relationship between the Applicant and his ex-spouse, whom he met in 2003, the record does not demonstrate his initial departure or subsequent attempted reentry or successful reentry were connected to those issues, or that at the time his relationship problems amounted to extreme cruelty. The Applicant states that he left the country because his mother was ill in Mexico, he believed this might be his last chance to see her, and his then-future spouse joined

him there because he wanted his parents to meet her. Further, although he asserts that his former spouse was manipulating him, he has not shown that her manipulation was the cause of his departure or unlawful reentry. The Applicant states that at the time he departed, he intended to return to the United States and marry his then-girlfriend. As the Applicant had previously entered the United States without inspection and never had a visa permitting him to enter the country lawfully, it appears that his return to the United States without inspection was already planned when he left to visit his mother. The evidence on the record is insufficient to establish that the Applicant's entry without inspection in January 2004 was caused by manipulation by his former spouse, and it is also not clear from the record that her behavior at that time, including pressure to come back to the United States to support her and her daughter, amounted to extreme cruelty.

The Applicant has established that during their relationship his former spouse subjected him to abuse, including economic abuse and extreme cruelty, and we find that his reentry to the United States in 2008 was connected to this abuse. The Applicant states that he and his ex-spouse had their first child two months after marrying in 2004, and they started having financial problems right away, which worsened after the birth of their second child in 2006. A letter from a social worker supports the Applicant's claim to have been subjected to abuse and extreme cruelty by his ex-spouse, in particular efforts to keep him from his children and fear being deported and permanently separated from them as well as economic abuse. The Applicant states that her financial manipulation worsened during their second year of marriage, when she hid mail from him so he only learned of unpaid bills and mounting debt when collection companies began calling. He states that she had considerable debt and only worked part-time, and he was worried that she could not provide for the children in his absence. He also states that when he was denied an immigrant visa in 2008, he was concerned she might be taking drugs because she spent so much money and he did not know where it was going, and he did not want his children living in that environment. Additionally, he states that his spouse repeatedly told him to come back and said there was no money if he was not there. Upon consideration of the full history of domestic violence experienced by the Applicant, including economic abuse and other behaviors that caused the Applicant to fear for the wellbeing of his children if he did not return, we find that the Applicant has established a connection between the abuse and his reentry to the United States in 2008.

The Applicant claims that he only has to prove that one of his departures from or entries into the United States is connected to his abuse based upon the statutory construction of the waiver provision, which states that there must be a connection between the battering or subjection to extreme cruelty and "the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States." The Applicant states that the use of the term "or" indicates that only one of his entries is required to be connected to his battering or subjection to extreme cruelty.

In order to trigger inadmissibility under section 212(a)(9)(C)(i) of the Act, an applicant must depart or be removed from the United States and then reenter (or attempt to reenter) without inspection. Based on a plain reading of the statute, we find that for each departure and reentry that triggers inadmissibility under section 212(a)(9)(C)(i) of the Act, the statute requires that either the departure or the reentry (or attempted reentry) be connected to battering or extreme cruelty. The use of "or"

signals a connection with either the departure or reentry, and that it is not necessary for both the departure and associated reentry to be connected to the abuse for a waiver to be available. But there is nothing in the statutory language signaling that an applicant who is inadmissible for departing and unlawfully reentering the United States on separate, unrelated occasions may qualify for a VAWA waiver even for inadmissibility triggered by a departure and subsequent unlawful reentry that are both unrelated to the abuse. Legislative history shows the purpose of the statute is to make inadmissibility for an unlawful reentry waivable if the reentry or departure was connected to abuse. *See, e.g.,* Battered Immigrant Women Protection Act of 1999: Hearing before Subcommittee on Immigration and Claims of the Committee on the Judiciary, House of Representatives, 106th Cong. 2nd sess. (2000); *see also* Technical Corrections to VAWA of 2005, Pub. L. No. 109-271, § 6(b)(1)(C), 120 Stat. 750 (2006). It is consistent with the plain language and purpose of section 212(a)(9)(C)(iii) of the Act that, if there is more than one departure and reentry triggering inadmissibility, either the departure or the reentry in each instance must be connected to the claimed abuse. Moreover, the Applicant has provided no authority for reading the statute in the manner he suggests.

In the present case, the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act for entering the United States unlawfully after having been unlawfully present on two separate occasions, in 2004 and again in 2008. Although we find that his reentry in 2008 was connected to the extreme cruelty he experienced at the hands of his former spouse, the evidence is insufficient to conclude that either his departure in 2003 or subsequent reentry without inspection in January 2004 was connected to the abuse. Therefore, he is no eligible for a waiver of inadmissibility under section 212(a)(9)(C)(iii) of the Act.

As the Applicant does not qualify for a waiver under section 212(a)(9)(C)(iii) of the Act, no purpose would be served in addressing his eligibility for a waiver for his unlawful presence under section 212(a)(9)(B)(v) of the Act, as granting the waiver would not result in his admissibility.

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 dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of N-A-O-*, ID# 16026 (AAO May 3, 2016)