U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-D-V-

DATE: MAY 16, 2016

APPEAL OF NEWARK, NEW JERSEY FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Costa Rica, seeks a waiver of inadmissibility for fraud or misrepresentation and for unlawful presence. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) of the Act. 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. The Director concluded the Applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting material facts on her 2007 non-immigrant visa application and during a consular interview, and section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), for having accrued one year or more of unlawful presence. The Director concluded that the Applicant had failed to establish extreme hardship to a qualifying relative and denied the application.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in determining that the Applicant's spouse would not experience extreme hardship due to her inadmissibility.

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

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a fraud or misrepresentation. Specifically, the record indicates that in May 2007, the Applicant applied for a nonimmigrant visa in Costa Rica and failed to reveal a prior period of overstay after her 2000 entry with a B2 visa, when she remained until 2006. On her visa application filed in 2007, she failed to reveal her prior overstay and stated she had stayed in the United States for ten days after her 2000 entry. She also did not disclose that she had a spouse and children in the United States. Section 212(a)(6)(C)(i) of the Act provides, in pertinent parts:

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.

The Applicant has also been found inadmissible for unlawful presence. Specifically, the record indicates the Applicant entered the United States in 2000 with a B-2 visitor's visa and remained beyond the authorized period of stay for that visa until she departed the United States in 2006. Section 212(a)(9)(B) of the Act provides, in pertinent parts:

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

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 issue on appeal is whether the Applicant has established that a qualifying relative will experience extreme hardship due to her inadmissibility. The Applicant does not contest the findings of inadmissibility for fraud or misrepresentation and unlawful presence, determinations supported by the record. The Applicant claims her spouse will experience psychological, medical and financial hardship due to her inadmissibility. The Applicant also states that hardship to her children should be considered.

The record of proceedings includes prior evidence submitted by the Applicant, including, but not limited to: statements from the Applicant, her spouse and their children; tax records for the Applicant and her spouse; psychological evaluations of the Applicant's spouse; a copy of a residential lease, residential utility bills and receipts for medical services; birth and marriage certificates; employment letters for the Applicant and her spouse; background materials on Costa Rica; statements from the Applicant's church and from friends of the Applicant; a letter from the Applicant's spouse's doctor; and photographs of the Applicant and her family.

The evidence in the record, considered both individually and cumulatively, does not establish that the Applicant's spouse would experience extreme hardship. The record does not contain sufficient evidence to establish much of the hardship claimed, and for the hardship demonstrated, the record does not show that it rises above the common consequences of removal or refusal of admission to the level of extreme hardship. Because there is no showing of extreme hardship, we will not address whether the Applicant merits a waiver as a matter of discretion.

A. 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 the Applicant's spouse.

The Applicant explains that her spouse has several medical conditions, including Type II diabetes, prostatitis, and Gastro-esophageal Reflux Disease (GERD), and that he relies on her to help him take his medicine and follow his doctor-prescribed meal plan. The Applicant further explains that her spouse is experiencing psychological hardship and refers to psychological assessments submitted into the record. The Applicant also claims that her two children reside with her and her spouse and that they depend on her and her spouse financially, and that if she is removed the loss of her income would result in her spouse being unable to meet his financial obligations. The Applicant further claims that her spouse would not be able to get adequate medical care upon relocation to Costa Rica, would not be able to find employment in Costa Rica and would have to sever his family and community ties in the United States.

The Applicant claims that her spouse will experience psychological hardship due to her inadmissibility. The record contains a psychological assessment of the Applicant's spouse which discusses his background and current living situation. The report discusses the increasing anxiety of the Applicant's spouse at the prospect of having to relocate to Costa Rica and sever his family ties in the United States. The report also states that his increasing anxiety and symptoms of depression have led him to withdraw from daily activities and interpersonal relationships, and that he is increasingly unable to function and engage in significant life activities over the predominant concern that he would be separated from his spouse. The report diagnoses the Applicant's spouse with Generalized Anxiety Disorder and Major Depressive Disorder. The psychological report made several recommendations regarding follow-up care and psychiatric evaluation for possible prescription medications but the record does not indicate this has occurred. According to the Applicant's spouse and the discussion in the psychological report, the cost and shame associated with taking medications for mental health issues are why the Applicant's spouse has not followed the recommendations of the psychologist who examined him.

The record indicates that the Applicant's spouse has a brother in the United States, with whom he claims to be very close, and two adult children. The record is unclear about whether or not the presence of these family members might provide emotional support for the Applicant in the event he remains in the United States if the Applicant is removed. While the record establishes that the Applicant's spouse is experiencing emotional hardship due to the prospect of being separated from

the Applicant, the record does not establish the severity of this hardship or the effects on his daily life.

The Applicant claims that her spouse will experience medical hardship if she is removed because he suffers from several medical conditions and she is the one who assists him in managing his conditions. The record includes a statement from the Applicant's spouse's doctor, dated January 5, 2015, which states that he suffers from Type II Diabetes, GERD, chronic prostatitis and low testosterone. The statement indicates that his conditions were controlled with medications and that further evaluation needs to be done in order to establish any additional treatment plans. While this evidence establishes that the Applicant's spouse has medical conditions, it does not support the claim by the Applicant that his medical conditions require the presence of the Applicant or that her spouse would be unable to care for himself, maintain his employment in the construction industry and otherwise perform his daily functions. Based on this evidence we can conclude that the Applicant's spouse has several medical conditions, but the severity and impact these conditions have on his ability to function on a daily basis is not clear.

The Applicant has asserted that her spouse would experience financial hardship due to her inadmissibility. She explains that she would not be able to find gainful employment in Costa Rica and he would struggle to support himself in her absence. With regard to the financial hardships, the Applicant has included tax records and several employment letters. Tax returns for 2013 show pre-tax earnings of $21,623. An employment letter from [redacted] dated July 1, 2014, states that the Applicant's spouse has worked there since 2010, and that he works 40 hours a week at $20 an hour.

With regard to the Applicant's earnings, there is a letter from an individual stating that the Applicant has worked for several years as a housekeeper for their household, but it does not specify what amount she earned or how often she worked. The 2013 tax returns do not report any income earned by the Applicant, and it is unclear from the record how much she earns. The record contains a copy of a residential lease and various utility bills for the Applicant and her spouse. The Applicant's actual income is not clear, and the lease and other utility bills provided do not establish that the Applicant's spouse would be unable to meet his financial obligations if the Applicant were removed.

The Applicant's spouse has asserted that their two children reside with her and her spouse and depend on her and her spouse's income. Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. In this case, the Applicant indicated it was unlikely that her children would relocate to Costa Rica. The record also contains statements from the Applicant's son and daughter stating they love their mother and do not wish her to depart the United States due to immigration problems. These statements do not indicate that their children are residing with them, and the statement from the Applicant's daughter states that she has moved out of their house and is working as a pet-sitter. These statements do not establish the extent to which any hardship the Applicant's children would experience would result in hardship to the Applicant's spouse. In addition, the record does not contain documentation indicating that her children, who are

now 20 and 25 years old, are unable to work in order to contribute to their financial support or are otherwise financially dependent on the Applicant and her spouse.

We acknowledge that the record establishes the Applicant's spouse will experience some financial and emotional hardship upon separation from the Applicant. However, the evidence in the record does not establish that these hardships, when considered in the aggregate, rise to the level of extreme hardship.

With regard to hardship upon relocation, the Applicant has asserted that her spouse would experience extreme medical and financial hardship upon relocation to Costa Rica. She explains that neither she, nor her spouse, have worked in Costa Rica for many years and they would not be able to find employment to sustain themselves. The Applicant has also asserted that her spouse would not receive adequate medical care, and refers generally to country information published by the U.S. State Department which has been submitted into the record.

An examination of the background information on Costa Rica indicates that medical care is generally available in the larger cities, but outside major rural areas there may be less access to medical services. There is no evidence the Applicant and her spouse would reside outside the major cities in Costa Rica such that they would be affected by the lack of medical resources or care in remote regions. In addition, as discussed above, the severity and level of hardship arising from the medical conditions of the Applicant's spouse is not clear from the record.

The record contains additional background materials on Costa Rica, discussing socio-economic conditions in the country. While the Applicant has referred to these documents to support her assertions of economic hardship upon relocation to Costa Rica, these reports are general in nature, and they do not establish that the Applicant's spouse, who is from Costa Rica, would not able to find employment there. The record does not establish that any financial hardship the Applicant's spouse would experience upon relocation would rise above the common hardships experienced upon relocation.

Thus, with regard to the claimed hardship upon relocation, the record either contains insufficient evidence to establish the hardships claimed, or, for the hardships demonstrated, does not show that they rise to the level of extreme hardship when considered both individually and cumulatively.

B. Discretion

As the Applicant has not demonstrated extreme hardship to a qualifying relative or qualifying relatives, we need not consider whether the Applicant warrants a waiver in the exercise of 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 dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of E-D-V-*, ID# 16230 (AAO May 16, 2016)