U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-G-R-E

DATE: OCT. 20, 2016

APPEAL OF PHOENIX, ARIZONA 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 Field Office Director, Phoenix, Arizona, denied the application. The Director concluded that the Applicant did not establish extreme hardship to her qualifying relative, her U.S. citizen spouse.

The matter is now before us on appeal. On appeal, the Applicant submits a brief and copies of documents previously submitted; she also states that the Director made factual errors in the decision on her case and that the decision should be reversed.

Upon *de novo* review, we will dismiss the appeal, because the Applicant did not establish extreme hardship to her U.S. citizen spouse. We also find, as explained below, that the Applicant is inadmissible under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), as a result of procuring a visa and obtaining admission to the United States by misrepresenting material facts.

I. LAW

The Applicant is seeking to adjust status to that of a lawful permanent resident and has been found inadmissible for unlawful presence. The Director did not specifically identify the periods of unlawful presence; however, the Applicant does not contest her inadmissibility on appeal.

Section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i), provides that a foreign national who was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such departure or removal, is inadmissible or has been unlawfully present in the United States for 1 year or more, and

who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(ii) of the Act provides that a foreign national is deemed to be unlawfully present in the United States if present in the United States after the expiration of the period of authorized stay or is present in the United States without being admitted or paroled.

Section 212(a)(9)(B)(v) of the Act, provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent.

We do not address the Applicant's inadmissibility under section 212(a)(9)(B)(i) of the Act, because we find that the Applicant also is inadmissible for fraud or misrepresentation, specifically, for procuring admission using her nonimmigrant B1/B2 border crossing card by stating that she was intending to vacation in the United States, when in fact she was residing in the United States with her spouse, who was then a lawful permanent resident.

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.

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

On appeal the Applicant states that the Director made factual errors in the decision concerning her Form I-601 and that the Director's decision should be reversed. The Applicant does not contest the finding of unlawful presence, and we also find her inadmissible for fraud or material misrepresentation. Both grounds of inadmissibility require that the Applicant demonstrate that her bar to admission will result in extreme hardship to a qualifying relative, who in her case is her U.S. citizen spouse.

A. Inadmissibility

As stated above, the Applicant was found inadmissible under section 212(a)(9)(B) of the Act, and she does not contest that ground of inadmissibility on appeal. Because we find the Applicant also is inadmissible under section 212(a)(6)(C) of the Act, a permanent ground of inadmissibility, we will not address her inadmissibility under section 212(a)(9)(B) of the Act.

The record reflects that the Applicant is inadmissible under section 212(a)(6)(C) for fraud or misrepresentation. The Applicant procured a visa to the United States by mispresenting her marital status on her Form DS-156, Nonimmigrant Visa Application. When the Applicant submitted her Form DS-156 in May 2003, she indicated in response to question 17, marital status, that she was single and never had been married. She also stated "none" in response to questions 18 and 19, which ask for the name and birthdate of her spouse. The record indicates that the Applicant and her spouse were married in [redacted] 2002, before she submitted the visa application. In addition, the Applicant procured admission to the United States on multiple occasions (June 2003, July 2004, August 2005, and March 2007) using her nonimmigrant B1/B2 border crossing card, when in fact she intended to permanently reside in the United States with her spouse, who was then a U.S. lawful permanent resident.[1] The Applicant testified during her adjustment interview in 2015 that she gained admission to the United States with her nonimmigrant B1/B2 border crossing card on at least three occasions by representing that she was coming to the United States on vacation, while she intended to permanently reside in the United States with her spouse.

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. *See generally 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

[1] The record indicates that the Applicant's spouse became a U.S. lawful permanent resident in 1998 and became a naturalized U.S. citizen in 2013.

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

Both of the Applicant's misrepresentations were willful. The Applicant completed her Form DS-156 in Spanish, her native language, on the Spanish-language version of the form, and she clearly indicates on that form that she was single and never married, when in fact she had been recently married. The form also contains her signature. In addition, the Applicant's statement that she believed that she could reside lawfully in the United States until the expiration date on her B1/B2 border crossing card is not persuasive, because she also specifically stated that, at the time of admission she claimed that she intended to visit the United States for vacation, when her true intention was to reside with her spouse. The Applicant did not state the true purpose of her travel to the United States.

The Applicant's misrepresentations about her marital status and purpose of her travel also were material. "[T]he test of whether concealments or misrepresentations are 'material' is whether they can be shown by clear, unequivocal, and convincing evidence to have been predictably capable of affecting, *i.e.,* to have had a natural tendency to affect, the Immigration and Naturalization Service's decisions." *Kungys v. United States*, 485 U.S. at 760. A misrepresentation is material if either the foreign national is excludable on the true facts, or the misrepresentation tends to shut off a line of inquiry which is relevant to the foreign national's eligibility and which might well have resulted in proper determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (A.G. 1961; BIA 1960). The Applicant's intention to reside in the United States with her then-lawful permanent resident spouse was material to her eligibility to obtain a nonimmigrant visa and be admitted the United States on her nonimmigrant visa, as she was, in fact, an intending immigrant and required an immigrant visa.

We find that the Applicant willfully misrepresented material facts to obtain a visa to the United States and to procure admission to the United States. She is inadmissible under section 212(a)(6)(C) of the Act. The Applicant is eligible for a waiver of inadmissibility under section 212(i) of the Act, but she must demonstrate that her U.S. citizen spouse would suffer extreme hardship as a result of her inadmissibility.

B. Waiver

On appeal, the Applicant states that the Director made factual errors when denying her Form I-601, and she requests that the Director's decision be reversed and her Form I-601 be approved. The Director's decision does contain factual errors; namely, the Director's decision states that the Applicant is a native of Cameroon, when she is a native of Mexico. The Director's decision also incorrectly states that the Applicant claimed to have a business, when the Applicant states that she is a homemaker. The Applicant, however, does not address the Director's conclusion that the Applicant did not establish extreme hardship to her qualifying relative. Regardless of the factual errors made in the Director's decision, the burden remains on the Applicant to demonstrate that she qualifies for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant

must show that her U.S. citizen spouse would suffer extreme hardship as a result of her inadmissibility. Hardship to the Applicant, the Applicant's U.S. citizen stepdaughter, or her mother-in-law may only be considered to the extent that the Applicant demonstrates that the hardship to those individuals causes hardship to her qualifying relative.

In support of the claim of hardship to her spouse, the record contains, but is not limited to: a brief; statements from Applicant, her spouse, and family members; documentation showing her spouse's income and the family's expenses; biographical information and pictures of the Applicant, her spouse, and her stepdaughter; and a psychological assessment of the Applicant's spouse.

The Applicant stated during her adjustment interview she believed that her spouse would suffer hardship if he were to be separated from her because she is the pillar of the household and homemaker, she helps her spouse make sure that the bills are paid on time, and she assists him by taking his parents to the store; and she assists her stepdaughter by taking her to appointments, advising her, and assisting her with school projects. The record reflects that the Applicant and her spouse were married in 2002. Photographs in the record show the Applicant and her spouse with other family members over a period of time, and family members in multiple letters attest to the strength of the couple's relationship and the Applicant's important role in the life of her stepdaughter.

The Applicant stated that her spouse is already experiencing emotional hardship as a result of his fear of being separated from her, that he was diagnosed with separation anxiety disorder, and that he is on a 6-month treatment plan. The Applicant's spouse also stated that he is suffering emotionally due to his worrying about being separated from the Applicant. To support those statements, the Applicant submits a psychological assessment of the Applicant's spouse, which indicates that his emotional well-being has declined as a result of his concern about the Applicant's waiver application and that he has experienced difficulty concentrating, malaise, difficulty falling and staying asleep, persistent aches and pains, headaches, restlessness, and irritability. The psychologist states that the Applicant's clinical profile was consistent with separation anxiety disorder with depressed mood. Although the psychologist indicates that the Applicant's spouse has experienced considerable distress as a result of his worrying about separation from the Applicant and that this has impaired his functioning, no specific examples in the record indicate how his functioning is currently impaired or would be impaired in the future. The record indicates that the Applicant's spouse is gainfully employed and engages with his family regularly. Although the Applicant stated that her spouse was on a 6-month treatment plan, and the psychological assessment included a three-phase course of therapy, each lasting 8 weeks, the record does not indicate whether he followed that plan of therapy or the results of that therapy.

The Applicant's spouse also stated that he relies on the Applicant to assist him in taking his parents to appointments and in caring for his daughter from his previous relationship. Both the Applicant and her spouse stated that they have been trying to have a child and wish to adopt, but they do not state what hardship they would experience in this regard if they were to be separated. There is no

documentation in the record of infertility treatment or the effect that separation would have on that treatment, although the psychological assessment mentions that the couple is in infertility treatment.

Letters in the record from the Applicant's spouse's family, including the Applicant's stepdaughter, confirm that the Applicant plays an active role in the family and that her spouse would suffer emotional hardship in her absence, which will be taken into consideration along with the other evidence of hardship, to determine if extreme hardship has been established.

The Applicant submitted documentation indicating her spouse's income and the family's expenses, but these records do not show what financial hardship the Applicant's spouse would experience as a result of separation from the Applicant. The Applicant stated that she helps her spouse pay their bills on time, but the record does not show that her spouse would not be able to pay his bills in her absence. The Applicant's spouse states that he would have to support the Applicant in Mexico, were the couple to be separated, in addition to the added expenses he would incur from having to find someone to take care of his house and help with his daughter. The Applicant did not claim employment in the United States on her Form G-325A, Biographic Information, but the record does not indicate why the Applicant could not obtain employment or support herself in Mexico. The record also does not clearly indicate how often the Applicant's spouse has custody of his daughter and whether his work limits his ability to assist his daughter when necessary. Although these hardships will be taken into account, they are not clearly established with documentation in the record.

We are unable to distinguish the emotional, psychological, and financial hardship in this case from the hardship that is the common consequence of removal or refusal of admission due to the lack of specific details regarding the effects that separation from the Applicant would have on the Applicant's spouse. For instance, the Applicant does not explain why her spouse would not be able to care for his daughter or timely pay his bills in her absence. Thus, although the record reflects that the Applicant's spouse would experience emotional hardship in the Applicant's absence, it does not show that the hardship demonstrated, considered individually and cumulatively, rises to the level of extreme hardship. Based on the evidence of record, considered in the aggregate, we do not find that the Applicant's spouse would suffer extreme hardship as a result of separation from the Applicant.

In regard to the hardship that the Applicant's spouse would experience if he were to relocate to Mexico with the Applicant, the Applicant stated that her spouse would suffer depression and anxiety because of the stress of relocation. The psychological report in the record also concludes that the Applicant's spouse's separation anxiety disorder would be exacerbated by the stress of relocation and that he would not be able to obtain therapy in Mexico because he would have no medical insurance in that country. The Applicant also further stated that she did not believe that her spouse would relocate because of his family ties in the United States. Although the record indicates that the Applicant's spouse has extensive family ties in Arizona, including his daughter, his parents and siblings, the Applicant does not specifically address the emotional hardship that her spouse would experience if he were to reside in Mexico. The record indicates that the Applicant sees his daughter and his parents multiple times a month, but Applicant does not address whether her spouse would be

able to continue visiting his daughter and parents as frequently, were he to reside in Mexico. The Applicant states that her spouse would suffer stress from relocation but she does not specify the sources of his stress, limiting our ability to determine the degree to which his stress is distinguishable from the normal stress associated with relocation due to inadmissibility. In addition, the record indicates that the Applicant's spouse pays $150 in child support for his daughter, but the Applicant does not address whether her spouse would be able to continue to pay that support were he to reside in Mexico. We acknowledge the U.S. Department of State's Mexico travel warning, issued on April 15, 2016, concerning threats to safety and security posed by organized criminal groups in certain places in that country. The Applicant, however, has not stated how her spouse would be affected by safety or security issues in Mexico. The Applicant's spouse is a native of Mexico, and the Applicant stated that her spouse graduated from secondary school in Mexico. Although the record indicates that the Applicant's spouse has strong family ties in the United States, as well as employment in the United States, the record does not show that the hardship that Applicant's spouse would experience, were he to relocate to Mexico, would be extreme.

The record contains documentation concerning the Applicant's spouse's moral character; however, as the Applicant has not demonstrated extreme hardship to a qualifying relative, we need not consider whether she 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, as she has not established extreme hardship to her U.S. citizen spouse as a result of her inadmissibility.

ORDER: The appeal is dismissed.

Cite as *Matter of M-G-R-E,* ID# 12071 (AAO Oct. 20, 2016)