U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-D-J-

DATE: OCT. 12, 2018

APPEAL OF COLUMBUS, OHIO FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Jamaica currently residing in the United States, has applied to adjust status to that of a lawful permanent resident. A foreign national seeking to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud/misrepresentation and seeks a waiver of that inadmissibility. 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 Columbus, Ohio Field Office denied the application, concluding that the Applicant did not establish, as required, extreme hardship to a qualifying relative if she is denied admission.

On appeal, the Applicant submits additional evidence and asserts that she established the requisite extreme hardship.

Upon *de novo* review, we will dismiss 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. There is a waiver of this inadmissibility 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. If the foreign national demonstrates the existence of the required hardship, then he or she must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered "extreme," the hardship must exceed that which is usual or

expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were the "common result of deportation" and did not alone constitute extreme hardship). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

II. ANALYSIS

The Applicant does not contest her inadmissibility on appeal, a finding supported by the record.[1] Therefore, the issues on appeal are whether the Applicant has established the requisite extreme hardship to a qualifying relative if she were denied admission and, if so, whether she merits a favorable exercise of discretion. As we explain below, the record contains insufficient evidence to establish that the claimed hardships rise to the level of extreme hardship when considered both individually and cumulatively. Because there is no showing of extreme hardship, we will not address whether the Applicant merits a waiver as a matter of discretion.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case her U.S. citizen spouse. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant, and 2) if the qualifying relative relocates overseas with the applicant. Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. The applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. 9 USCIS Policy Manual B 4(B), https://www.uscis.gov/policymanual/HTML/PolicyManual.html. In the present case, the record contains no statement from the Applicant's spouse indicating whether he intends to remain in the United States or relocate to Jamaica if the Applicant's waiver application is denied. The Applicant must therefore establish that if she is denied admission, her qualifying relative would experience extreme hardship both upon separation and relocation.

The Applicant's spouse submits a letter explaining that he has lost many family members, including three relatives who died from cancer and three others who died from heart attacks. He also explains that he has had two failed marriages, which caused him to become depressed. He states that he loves the Applicant, that it would break his heart if she could not be with him, and that he cannot live alone. He states he receives Social Security benefits and that his health and welfare would be jeopardized if he moved to Jamaica.

We find that there is insufficient evidence to show that if the Applicant's spouse remains in the United States without the Applicant, his hardship would rise beyond the common results of removal or

[1] The Applicant concedes that she entered the United States in 2003 using a fraudulent visa.

inadmissibility to the level of extreme hardship. The record contains a letter from a physician indicating that the Applicant's spouse suffers from "multiple medical conditions," has had a permanent disability related to his back since 2001, and needs the assistance of the Applicant for activities of daily living. However, there is no elaboration regarding his medical conditions and no detail specifying how the Applicant assists her spouse. The Applicant himself does not address any limitations he has, but rather, he contends that his conditions are "control[led] by good dieting and over the counter medicine." He does not address how he cared for himself prior to marrying the Applicant in 2017. Moreover, the record shows that he owns a beauty salon, has three rental properties, and worked as a substitute teacher in 2014, 2015, and 2016. He does not contend that he is unable to work or manage his business and rental properties despite any medical problems. Although we are sympathetic to the couple's circumstances, the record does not show that the Applicant's spouse's situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would enormally be expected upon deportation). We find that the evidence, even considered in its totality, is insufficient to show that the hardship faced by the Applicant's spouse would rise beyond the common results of removal or inadmissibility if he remains in the United States without the Applicant.[2]

We recognize that relocating to Jamaica would entail some hardship. Nonetheless, the Applicant has not demonstrated extreme hardship to a qualifying relative upon separation, and, as explained above, the record does not contain a statement or evidence that her spouse would relocate with her to Jamaica if she is denied admission. Even if the record established extreme hardship to the Applicant's spouse upon relocation, in the absence of a statement that he intends to relocate with her, there is no basis for us to conclude that such hardship would actually result from denial of her waiver application.

The Applicant must establish that denial of the waiver application would result in extreme hardship to a qualifying relative both upon separation and relocation. As the Applicant has not established extreme hardship to her spouse in the event of separation, we cannot conclude that she has met this requirement. As such, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of D-D-J-*, ID# 1669737 (AAO Oct. 12, 2018)

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[2] To the extent counsel contends in the appeal brief that the Applicant helps manage the hair salon and rental properties, and "picks up after [her spouse] and get [his] socks and shoes on," the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.