U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-M-R-

DATE: OCT. 22, 2018

APPEAL OF MIAMI, FLORIDA FIELD OFFICE DECISION

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

The Applicant, a citizen of Peru who resides 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 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.

The Director of the Miami, Florida Field Office denied the waiver, concluding the Applicant did not establish that her U.S. citizen spouse, who is her only qualifying relative, would suffer extreme hardship as a result of the Applicant's inadmissibility.

On appeal, the Applicant submits additional evidence and asserts her spouse will suffer extreme emotional, physical, and financial hardship as a result of the couple's separation or relocation to Peru.

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. Section 212(i) of the Act. 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. *Id.*

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 for fraud or misrepresentation, a finding that is supported by the record.[1] Thus, she requires a waiver of this inadmissibility. Upon our review of the entire record, we find that the evidence does not establish that the Applicant's spouse will suffer extreme hardship as a result of the Applicant's inadmissibility. Further, even if extreme hardship could be established, the Applicant has not shown she merits a waiver as a matter of discretion.

A. Hardship

The 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 evidence establishes 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 he would relocate with her, or would remain in the United States, if she is denied admission. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual. In the present case, the spouse does not indicate whether he intends to remain in the United States or relocate if the waiver is denied. The Applicant must therefore establish if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

The spouse asserts that his family relies on income he earns from his businesses in the United States and that if he relocates to Peru to be with the Applicant and his son, he will not be able to continue his business activities in the United States or find suitable employment in Peru. The record establishes that the spouse is the President of two companies, [redacted] and [redacted] Financial documentation submitted indicates that [redacted] generated sales of over $17 million in 2016 and was projected to reach $24 million in sales in 2017. In addition, [redacted] had gross receipts of approximately $480,000 in 2016. The spouse explains that his financial responsibilities in the United States include the following: supporting his wife, son, and mother; paying for mortgages on the family's three properties; and paying down personal debt. He states further it would be impossible for the family to maintain their standard of living or for him to pursue his chosen career

[1] From 2005 to 2011, in attempts to gain lawful permanent residence under the Cuban Adjustment Act, the Applicant falsely claimed she was a Cuban citizen by presenting a fraudulent Cuban birth certificate.

in Peru, which would result in a drastic reduction in income amounting to extreme financial hardship. The Applicant provides U.S. Department of State reports on Peru to support the claim that her spouse would not be able to find meaningful employment there.

With respect to emotional hardship, the Applicant submits psychological summaries and evaluations concerning her spouse, dated in 2012, 2015, and 2017. These records indicate that in 2012, the Applicant's spouse began treatment, which included taking medications, for Anxiety Disorder and Major Depressive Disorder. At various points during his psychological evaluations, the spouse reported suffering from increased stress, insomnia, weight loss, a hypersensitive esophagus, difficulty concentrating and panicking at work, irritability, restlessness, nightmares, and high blood pressure. These evaluations also reflect that the Applicant's spouse attributed his symptoms to the Applicant's immigration situation and his family history, as well as financial stressors.

The spouse also states that hardship to any immediate family members as a result of his relocation would cause him hardship. He expresses concern for his son (who is now seven years old) upon relocation because, he claims, Peru does not have the same educational opportunities as the United States, and he fears his son will not be safe there. He also asserts that he is concerned for the well-being of his elderly mother and his siblings, one of whom lives in New York and has Multiple Myeloma. The record shows that the spouse's mother resides in an assisted living facility in New York and is suffering from moderate dementia, Crohn's disease, and heart disease. The spouse states that he and his family are currently able to spend quality time visiting his mother, but if they relocate to Peru, they will not be able to do so, raising concerns that her health will decline as a result.

The spouse further claims that he is troubled by the prospects of being forced to give up his U.S. companies if he were to relocate to Peru and, as a consequence, the potential harm that might come to his 119 employees and their families. He mentions further the loss to the U.S. government in tax revenue if his company were to close when he relocates.

We have reviewed the entire record, and we find that it does not support a conclusion that the Applicant's spouse would experience extreme hardship if he relocates abroad due to the Applicant's inadmissibility. The Applicant's hardship claims are centered on the assertion that her spouse would no longer be able to support his family if he lived outside the United States. The spouse asserts that his line of work requires him to regularly meet face to face with all levels of employees and vendors. The spouse's business partner also asserts that the companies would go out of business without the spouse's daily presence.

The Applicant submits documentation concerning the organizational structure of [redacted] and the spouse's role within the organization, but we do not find this evidence to establish that the company could not operate without the spouse's daily on-site presence.[2] The organizational chart lists the spouse as President and also "Chief Visionary Officer," but it also reflects that the spouse has, as his

[2] The Applicant did not submit a similar organizational chart for the other company, [redacted]

direct reports, several vice presidents, directors, and chiefs, each of whom has subordinate staff reporting to them. While we do not minimize the spouse's important leadership role or his concern for his employees' welfare, the organizational structure denotes a company that has many levels of managerial, supervisory, and technical personnel, and the evidence submitted does not establish that they could not continue to execute the daily functions of the company upon the spouse's relocation to Peru.

Nor does the evidence corroborate the spouse's claim that he could not support his family if he relocated to Peru to be with the Applicant. The record does not establish that his U.S. businesses could not continue to operate without his daily presence or that the value of his assets (including his ownership interest in the two companies, if he sold them) would be insufficient to meet the financial needs of his family. And, the spouse does not show that he would unable to obtain employment if he resided in Peru, either onsite or virtually with another company. A qualifying relative's loss of current employment and the inability to maintain one's present standard of living do not ordinarily amount to extreme hardship. *Matter of Pilch*, 21 I&N Dec. at 631.

The Applicant has shown that her spouse's mental health has been impacted by various stressors, including her immigration status. However, the record does not reflect that, if he decides to relocate abroad along with the Applicant and their son, his condition would worsen, or that he would be unable to obtain treatment. We also recognize that hardship to family members (which includes difficulties experienced by his brother who was diagnosed with cancer in 2014), will cause hardship to the spouse, but again, the Applicant has not shown that her spouse would be unable to provide financial, emotional, or other support for these family members, or visit them in the United States. Nor has she demonstrated that she and her spouse would be unable to provide their son with the appropriate educational opportunities in Peru. Thus, the Applicant has not established these concerns would then cause her spouse to suffer hardship rising above what would normally be expected upon relocation.

Furthermore, although the Applicant indicates she is concerned for the family's safety in Peru because of the crime her relatives living there have experienced, the supporting documentation the Applicant provides on current country conditions does not corroborate concerns about safety in Peru. In contrast, the current Department of State Travel Advisory reflects that travelers to Peru should exercise normal precautions.

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 relocation, she has not met this requirement.

B. Discretion

Even if we were to conclude that extreme hardship is a likely result from either separation or relocation, we would not exercise our discretion favorably and deem the waiver approvable.

The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the foreign national and his or her family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

The favorable factors in the Applicant's case include her role as caregiver to her son and husband, her involvement in her son's school and her church, and the remorse she expresses for seeking an immigration benefit through fraud. In addition, the Applicant has no record of criminal convictions in the United States.

However, the unfavorable factors in the Applicant's case are more significant. After her August 2004 admission into the United States with a nonimmigrant visa, the Applicant accrued periods of unlawful presence in the United States since the expiration of her authorized stay. Additionally, approximately three months after her 2004 admission, the Applicant was arrested for prostitution and lewd and lascivious behavior while working as a dancer in Florida. She was never prosecuted for this offense. *See* Henry v. INS, 74 F.3d 1, 6 (1st Cir.1996) ("[W]hile an arrest, without more, is simply an unproven charge, the fact of the arrest, and its attendant circumstances, often have probative value in immigration proceedings."); see also *Matter of Thomas*, 21 I&N Dec. 20, 23-25 (BIA 1995) (en banc) ("In examining the presence of adverse factors on an application for discretionary relief, this Board has found it appropriate to consider evidence of unfavorable conduct, including criminal conduct which has not culminated in a final conviction for purposes of the Act.").

In September 2005, the Applicant filed her first Form I-485, Application to Register Permanent Residence of Adjust Status, under the Cuban Adjustment Act. In her application, she claimed to be a Cuban citizen by birth and submitted a Cuban birth certificate in support, which USCIS later determined was fraudulent. In 2006, she appeared for her adjustment of status interview and testified, under oath, to an immigration officer that she was a Cuban citizen. One year later, using her fraudulent birth certificate, she obtained a Cuban passport. She then submitted this passport to USCIS in an effort to perpetuate her fraudulent representation when filing the current Form I-485 in

2010 based on her marriage to a U.S. citizen. Instead of telling the truth about her birth in this application or during her adjustment of status interview a year later, she again claimed to be born in Cuba. In 2011, USCIS verified that her Cuban birth certificate was fraudulent, that the Applicant was a citizen of Peru by birth, and that both of her parents were born in Peru. Thus, the record shows that for six years, the Applicant perpetuated a fraudulent scheme, first attempting to procure permanent residence under the Cuban Adjustment Act and then concealing this fraud in her subsequent application for adjustment of status. The Applicant only ceased claiming Cuban citizenship in 2011, when immigration officials notified her that the Cuban birth certificate and passport she presented were proven to be fraudulent.

Accordingly, although the record reflects that the Applicant is her son's primary caregiver and is involved in her community, she has not shown a respect for immigration laws, or a willingness to be forthcoming and truthful with immigration officials. Thus, we find the negative factors in her case, which include the duration, nature, and recency of her misrepresentations, as well as her unlawful residence in the United States, outweigh these favorable factors such that she would not merit a favorable exercise of discretion even if she could establish that her spouse would suffer extreme hardship.

III. CONCLUSION

The Applicant has not established her spouse will suffer extreme hardship as a result of her inadmissibility, nor has she shown she merits a waiver as a matter of discretion. The waiver will therefore remain denied.

ORDER: The appeal is dismissed.

Cite as *Matter of E-M-R-*, ID# 1484847 (AAO Oct. 22, 2018)