U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-T-D-

DATE: OCT. 30, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a citizen of Vietnam 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 or 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 San Jose, California Field Office denied the application, concluding that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation and that she had not established that her U.S. citizen spouse would experience extreme hardship upon refusal of her admission to the United States. We dismissed the Applicant's appeal and denied her subsequent motion to reopen, affirming her inadmissibility and the Director's extreme hardship finding.

On this second motion to reopen, the Applicant submits new evidence and asserts that she did not intentionally commit a misrepresentation and that her spouse would experience extreme hardship if the waiver is denied.

Upon review, we will deny the motion.

I. LAW

A motion to reopen is based on documentary evidence of new facts, and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies this requirement and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The Director found the Applicant inadmissible for fraud or misrepresentation, specifically for misrepresenting her marital status when applying for a nonimmigrant visa in 2014. The Applicant

contested that finding on appeal by asserting that she did not willfully misrepresent her marital status but relied on an agency to prepare her immigration documents. In dismissing the appeal, we concluded that the Director correctly found the Applicant to be inadmissible because she was responsible for reviewing the visa application prior to submission to ensure accuracy. We further found that the Applicant did not establish that her spouse would experience emotional and financial hardship upon relocation, nor did she show her spouse's intent to separate or experience extreme hardship in that scenario.

On prior motion, the Applicant stated that due to a recent medical diagnosis, her spouse would not relocate if the waiver is denied. In denying the motion, we concluded that the submitted medical documentation was insufficient to corroborate medical hardship as it did not provide detail about the spouse's condition or indicate that any assistance is required. We also found that the record did not indicate the impact of any emotional hardship on the spouse's daily life.

With the current motion, the Applicant submits updated affidavits from herself and her spouse; a letter from the preparer of the Applicant's 2014 visa application; letters from her spouse's physician along with prescriptions information; and financial documentation.

In her updated affidavit, the Applicant repeats her previous contention that she did not knowingly misrepresent her marital status on her visa application, that the consulate did not verify information with her, and that had she known the information was wrong she would have corrected it. She maintains that she wanted to travel with her son to the United States in 2014, so she relied on an agency which had a customary process of not allowing review of the application, but that she would not have understood anything to verify anyway since she did not understand English. The Applicant argues that she could not be responsible for the information at that time because she did not know it was incorrect until her immigration interview in the United States in 2015.

A letter from a person claiming to have filled out the Applicant's visa application in 2014 states that the Applicant paid for the service and signed a blank application, after which the preparer organized documentation and filled out the visa application form for the Applicant. She further maintains that she did not give the application to the Applicant to review because the Applicant did not understand English and that is the usual way of service in Vietnam.

As we discussed in our decision on appeal, the Applicant is responsible for information contained on her visa application regardless of the use of an agency in preparing her application. Neither her statements, nor the letter from the person claiming to be the preparer, are sufficient to show she should be absolved of that responsibility.

Regarding hardship to her spouse, the Applicant maintains that she and her spouse need each other, that her spouse loves and cares for her, that it took a long time to find each other, and that her immigration problem is causing her spouse stress and is affecting his health. In his affidavit, the spouse asserts that he would not relocate to Vietnam with the Applicant. He contends that he has never been as happy as he is now with the Applicant, that his health is deteriorating due to ischemic

coronary artery disease and valve regurgitation, that stress is causing pain in his neck, and that the stress and pain affect his work performance so he fears losing his job. The spouse asserts that he feels sad, angry, depressed, and bitter; that he has problems sleeping and focusing on work; and that he will lose his mind and health without the Applicant.

A letter from a physician states that the spouse has been diagnosed with the following: spinal stenosis, cervical region; unspecified hemorrhoids; gastro-esophageal reflux disease with esophagitis; spinal stenosis, lumbosacral region; and eczema herpeticum. The letter also indicates that the spouse has been under care for neuropathy and chronic neck pain, that he continues to have pain, and that he was referred to a neurosurgeon for evaluation and recommended to continue physical therapy to ensure symptoms do not progress to permanent damage. The Applicant also submits the referral letter to a neurosurgeon and a list of prescriptions.

The affidavits from the Applicant and her spouse are general, providing little detail to support their assertions of emotional hardship to the spouse upon separation. The Applicant contends that she and her spouse need each other and that her immigration issues affect her spouse's health. The spouse asserts that the stress affects his work to where he fears losing his employment, but he does not describe how his employment is affected or present evidence to support the assertion that his employment is in jeopardy. The spouse also refers to documentation showing the couple's life together, but this evidence does not establish hardship to the spouse in the Applicant's absence, and apart from contending that he feels sad every day and having problems sleeping, the spouse does not describe how separation from the Applicant would impact his daily life.

The spouse's physician identifies several health conditions experienced by the spouse and indicates that he was referred for further evaluation. The physician's letter, however, provides little further information, does not describe the severity of the spouse's conditions, or detail a treatment plan that requires the Applicant's presence. Although the spouse contends that he also suffers ischemic coronary artery disease and valve regurgitation, the current physician's letter does not identify these conditions. Overall, the Applicant has not shown how severe her spouse's medical conditions are or that he is unable to manage them without the Applicant.

On motion, the Applicant has not overcome the deficiencies identified in our two prior decisions. After considering the evidence, including that submitted on motion, we find that the Applicant has not demonstrated that the emotional and medical hardships to the qualifying relative, considered individually and cumulatively, would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship. Consequently, the waiver application will remain denied.

ORDER: The motion to reopen is denied.

Cite as *Matter of T-T-D-*, ID# 1871132 (AAO Oct. 30, 2018)