U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23650885

Date: DEC. 2, 2022

Appeal of Los Angeles, California Field Office Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant's departure from the United States would execute a deportation order against him, rendering him inadmissible to the country for the following 10 years. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(A)(ii)(I), 8 U.S.C. § 1182(a)(9)(A)(ii)(I). He seeks advanced permission to reapply for admission so that, if he obtains a U.S. immigrant visa abroad, he can immediately return to the country as a lawful permanent resident (LPR). *See* section 212(a)(9)(A)(iii) of the Act.

The Director of the Los Angeles, California Field Office denied the application as a matter of discretion. The Director found the Applicant inadmissible not only because of the deportation order but also for misrepresenting his nationality on an asylum application, *see* section 212(a)(6)(C)(i) of the Act, and for unlawful presence, *see* section 212(a)(9)(B)(ii) of the Act.[1] Determining that the Applicant did not establish his eligibility to apply for waivers of the additional inadmissibility grounds, the Director concluded that the application's adjudication would serve no purpose.

On appeal, the Applicant bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we find that the Director's decision insufficiently explains the application's denial ground. We will therefore withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

I. THE INADMISSIBILITY GROUNDS

A. The Deportation Order

Noncitizens who have been ordered excluded, deported, or removed from the United States generally cannot gain admission to the country for 10 years after their departures. Section 212(a)(9)(A)(ii)(I) of the Act. U.S. Citizenship and Immigration Services (USCIS), however, may grant exceptions to this inadmissibility ground by consenting to noncitizens' applications to reapply for admission. Section 212(a)(9)(A)(iii) of the Act. Noncitizens whose U.S. departures would execute exclusion, deportation, or removal orders against them may apply for conditional permission to reapply before leaving the

[1] The asylum application also lists the Applicant's middle name as his first name.

country. 8 C.F.R. § 212.2(j). Approvals, however, would not take effect unless the applicants leave the United States. *Id.*

Evidence supports the potential inadmissibility of the Applicant, a 55-year-old native and citizen of Mexico, under section 212(a)(9)(A)(ii)(I) of the Act. U.S. immigration records indicate that he last entered the United States without admission or parole in the early 1990s. He applied for asylum in 1996, *see* section 208(a)(1) of the Act, 8 U.S.C. § 1158(a)(1), and was referred to an Immigration Judge in deportation proceedings. In July of that year, the Applicant withdrew his asylum application. Instead, the Immigration Judge granted him voluntary departure, permitting him to voluntarily leave the country within eight months without being deported. *See* section 244(e)(1) of the Act, 8 U.S.C. § 1254(e)(1) (1995). Because the Applicant did not leave the United States by the deadline, however, an alternate deportation order took effect. Despite the order, he has continued to live in the United States with his purported LPR spouse and their two adult U.S. citizen children. Thus, the Applicant's departure from the country would execute the deportation order against him, rendering him inadmissible under section 212(a)(9)(ii)(I) of the Act.

B. Misrepresentation

Evidence also supports the Director's finding that the Applicant misrepresented his nationality on his asylum application. Noncitizens who seek U.S. immigration benefits by fraud or willful misrepresentation of material facts generally cannot gain admission to the country. Section 212(a)(6)(C)(i) of the Act. U.S. immigration records show that the Applicant's 1996 asylum application states his birth in Guatemala, not Mexico. The asylum application indicates that the Applicant lived his whole life in Guatemala, where a group of "guerillas" beat, abducted, and threatened to kill the Applicant. Because country conditions in Guatemala at that time would have affected the Immigration Judge's decision on the asylum application, the Applicant's nationality was a material fact. *See Forbes v. INS*, 48 F.3d 439, 442-43 (9th Cir. 1995) (holding that misrepresentations are material if they have "a natural tendency to influence" immigration agency decisions) (citation omitted). The Applicant's appellate brief concedes his willful misrepresentation on the asylum application.

Despite admitting the misrepresentation, the Applicant challenges the inadmissibility finding. Arguing that section 212(a)(6)(C)(i) of the Act does not apply to his misrepresentation, he cites a 2009, non-precedent decision of ours. His argument, however, is unavailing. First, the non-precedent decision does not bind us in this matter. *See* 8 C.F.R. § 103.10(b) (requiring USCIS to follow only precedent or adopted decisions). Moreover, the facts of the 2009 case distinguish it from the Applicant's circumstances. In the earlier matter, we found that a noncitizen's use of a false name and nationality upon her apprehension in the United States did not render her inadmissible because she did not misrepresent the facts to obtain "a visa, other documentation, or admission into the United States or other benefit under [the Act]." *See* section 212(a)(6)(C)(i) of the Act. But, unlike the noncitizen in the 2009 case, the Applicant misrepresented his nationality in an asylum filing, an application for a benefit under the Act. Thus, both law and evidence support the Applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

C. Unlawful Presence

USCIS records further support the Applicant's inadmissibility for unlawful presence. Noncitizens who remain "unlawfully present" in the United States for one year or more generally cannot gain admission to the country for 10 years after their departures. Section 212(a)(9)(B)(i)(II) of the Act. The term "unlawfully present" includes presence in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act. Records indicate the Applicant's unlawful presence in the United States for several years after his last entry, which was without admission or parole.

II. THE DENIAL GROUND

When USCIS denies an application, the Agency must "explain in writing the specific reason for denial." 8 C.F.R. § 103.3(a)(1). The Director's written decision states: "Because you are inadmissible under section 212(a)(6)(C)(i) [of the Act], you are ineligible for a provisional unlawful presence waiver. . . Consequently, 'no purpose would be served in granting the application' because you would remain inadmissible. [citations omitted]."[2]

On appeal, the Applicant interpreted the denial to stem from his ineligibility for a provisional unlawful presence waiver. *See* 8 C.F.R. § 212.7(e)(3)(iii) (limiting provisional unlawful presence waivers to applicants whose U.S. departures would render then inadmissible only for unlawful presence). But the Director's decision previously notes the application's omission of documentary evidence of the Applicant's purported marriage. The Act limits waivers for misrepresentation and unlawful presence (including provisional unlawful presence waivers) to noncitizens with U.S. citizen or LPR spouses or parents. Section 212(a)(9)(B)(v), (i) of the Act. Thus, the Director may have based the denial not on the Applicant's ineligibility for a provisional unlawful presence waiver, but rather on insufficient proof of his purported marriage to an LPR and the resulting ineligibility for waivers of both misrepresentation and unlawful presence.

Because the Director's decision does not explain the specific reason for the denial, we will withdraw the decision and remand the matter. On remand, the Director should notify the Applicant more clearly of the specific reason(s) for the proposed denial and afford him a reasonable opportunity to respond to the specified ground(s). Upon receipt of a timely response, the Director should review the entire record and issue a new decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for issuance of a new decision consistent with the foregoing analysis.

[2] The Director's decision does not address the possibility of the Applicant's application for a non-provisional unlawful presence waiver outside the United States.