U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21862116

Date: AUG. 17, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Sierra Leone, seeks a waiver of inadmissibility under section 212(d)(11) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(d)(11), for assisting a noncitizen in entering or trying to enter the United States in violation of law (smuggling), and section 212(i) of the Act, 8 U.S.C. § 1182(i), for fraud or willfully misrepresenting material fact. The Director of the Nebraska Service Center denied the application, concluding that a U.S. Department of State (DOS) consular officer determined the Applicant knowingly assisted, abetted, or aided individuals to enter, or try to enter, the United States, and then found that the Applicant did not meet the eligibility requirements for a smuggling waiver because the individuals she aided in smuggling were not her spouse, parent, son, or daughter. We dismissed the Applicant's appeal. The matter is now before us on a motion to reopen and reconsider. Upon review, we will dismiss the motions.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), 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 these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The record shows that in finding the Applicant inadmissible for smuggling, a DOS consular officer determined specifically that she was assisting children to enter the United States that were not her own. In our prior decision, incorporated here by reference, we acknowledged the Applicant's claim that she believed that her spouse was the father of several children for whom he filed a Form I-130, Petition for Alien Relative, and that she was therefore their stepmother. She claims that she told the consular officer that she has four biological children and three stepchildren but did not know their actual parentage until DNA tests indicated he was not the father of the three children. We noted the spouse's statement that he knew they were not the Applicant's children but believed he was the biological father and they were her stepchildren and instructed the Applicant to claim them during her immigration visa interview. The record does not indicate, however, that the Applicant stated the three

children were her stepchildren, and birth certificates submitted with the Form I-130 petitions prior to the DNA testing designated the Applicant as the birth mother of all of the children for whom her spouse filed petitions. We determined that the Applicant did not provide substantive evidence to support her claim that she did not knowingly assist in an attempt to procure immigrant visas for the children that would allow them to enter the United States in violation of law. We also indicated that because the Applicant resides overseas and was applying for an immigrant visa, DOS makes the final determination on her inadmissibility. We then concluded that the Applicant was not eligible for a waiver because her relationship to the children was not a qualifying relationship for purposes of the waiver described at section 212(d)(11) of the Act.

On motion, the Applicant contends, through counsel, that she had four children with her spouse, who fathered children in other relationships, that births in Sierra Leone are not registered contemporaneously with the birth but obtained years later when needed, and that many records were lost during civil unrest from 1990 to 2002. The Applicant explains that her spouse filed a Form I-130, Petition for Alien Relative for 14 children, claiming she was the mother of 13, but after U.S. Citizenship and Immigration Services (USCIS) issued a notice of intent to deny (NOID) the petitions he responded by clarifying the Applicant was the mother of four and stepmother to those under 18. The Applicant argues that the birth certificates do not list her as birth mother but only as mother, that they were provided by her spouse, and that her spouse submitted ambiguous and inappropriate documentation. She contends it was only subsequent to her visa interview and after the DNA tests showing her spouse was not the biological father of the three children that she realized she was not their stepmother and her testimony inaccurate. The Applicant argues that her innocent misrepresentation was not knowingly, as required for inadmissibility, but was inadvertent, accidental, and honest mistaken beliefs. In support she cites legal decisions *Bryan v U.S.*, 524 U.S. 184, 193 (1998) and *Matter of Healy and Goodchild* I&N Dec 22 (BIA 1979) which discuss willful.[1]

In an updated affidavit submitted on motion, the Applicant's spouse claims that in 2013 he personally obtained birth certificates in Sierra Leone from the Office of the Registrar of Births and Deaths. He states that he listed himself as father on 14 birth certificates and the Applicant as mother on 13 because he believed he was permitted under Sierra Leone law to list her as mother even if she was the stepmother. The spouse explains that by custom in Sierra Leone the mother is the married female who heads the household and raises children. He contends that he arranged for DNA tests after receiving the NOID from USCIS for relative petitions he filed on behalf of his children and that DNA test results showed three of the children that the Applicant raised were not actually his biological children. The spouse contends that the Applicant only knew what he had told her for her consular interview and that she did not make intentional misrepresentations.

As noted, because the Applicant is residing abroad and applying for an immigrant visa, the DOS makes the final determination concerning eligibility for the visa and any grounds of inadmissibility that may apply. Here, DOS determined that the Applicant's admission to the United States is barred by sections 212(a)(6)(C)(i) and 212(a)(6)(E)(i) of the Act for fraud or willfully misrepresenting a material fact, and for having knowingly assisted other foreign nationals to enter or to try to enter the United States

[1] In *Bryan* the Supreme Court found, in part, that a conviction for "willfully" violating a statute requires a showing that the defendant knew his conduct was unlawful. In *Healy and Goodchild* the Board of Immigration Appeals refers to a Third Circuit decision that knowledge of falsity satisfies the fraud and willfulness requirements in seeking a visa.

in violation of the law. We consider only if the Applicant qualifies for a waiver of those inadmissibility grounds. A waiver of inadmissibility under section 212(d)(11) of the Act is available to individuals whose violation of section 212(a)(6)(E)(i) of the Act involved a spouse, parent, son, or daughter (and no other individual). In this case, the Applicant's inadmissibility involves the smuggling of children other than her own rather than a qualifying relative. Consequently, she is not eligible for a waiver of inadmissibility of this ground.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Applicant has not done so in this motion.

ORDER: The motion to reconsider is dismiss.

FURTHER ORDER: The motion to reopen is dismissed.