U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21883131

Date: AUG. 26, 2022

Appeal of San Francisco, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of China, seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for fraud or misrepresentation. The Director of the San Francisco, California Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant did not establish that her only qualifying relative, her lawful permanent resident spouse, would experience extreme hardship because of her continued inadmissibility. The matter is now before us on appeal. On appeal, the Applicant submits evidence and a brief asserting her eligibility. The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 U.S. citizen or lawful permanent resident spouse or parent of the foreign national. If the foreign national demonstrates the existence of the required hardship, then they must also show that U.S. Citizenship and Immigration Services 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).

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The issues on appeal are whether the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation and if so, whether she has established extreme hardship to her lawful permanent resident spouse.

First, we will address whether the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. The record reflects that the Applicant listed N-Y-[1] as her travel companion and friend in a June 2014 B1/B2 nonimmigrant visa application.[2] The B1/B2 nonimmigrant visa was issued on August 20, 2014, the Applicant travelled to the United States from February 19, 2015, until March 3, 2015, and she returned to China. The Applicant entered the United States in F-1 student nonimmigrant status in September 2016 and filed Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment of status application), in May 2017. The Director stated that the Applicant testified at her initial adjustment of status interview in May 2018 that N-Y- was a friend who she had never dated. The Director then noted a subsequent adjustment of status interview in March 2019 where the Applicant testified that N-Y- was her ex-boyfriend, she broke up with N-Y- in August or September 2014, and she ended up traveling to the United States alone. The Director also referred to the interviewing officer asking why the Applicant previously denied dating N-Y- and the Applicant's response that the officer in the initial interview never asked that question. The Director determined that by initially testifying that she had never dated N-Y-, the Applicant cut off a line of inquiry regarding the nature of her relationship and the overall sequence of events related to her current and prior relationships, especially since her relationship with N-Y- ended close to the time she came to the United States and stayed with her current spouse. The Applicant mentions in her waiver application that she stayed with her current spouse for part of her visit in 2015 and they were friends at the time.

In making a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act, there must be evidence in the record showing that a reasonable person would find that an applicant used fraud or willfully misrepresented a material fact to an authorized official of the U.S. government in an attempt to obtain a visa, other documentation, admission into the United States, or any other immigration benefit. *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *see also* 8 *USCIS Policy Manual* J.3(A)(1), https://www.uscis.gov/policy-manual (discussing, as guidance, findings of fraud or willful misrepresentation).

A misrepresentation is material for the purposes of section 212(a)(6)(C)(i) of the Act when it tends to shut off a line of inquiry that is relevant to a foreign national's admissibility and that would predictably have disclosed other facts relevant to his or her eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-*, 27 I&N Dec. 105 (BIA 2017). Conversely, a misrepresentation that is not relevant to the foreign national's eligibility for the immigration benefit sought is considered

[1] Initials are used to protect the identity of the individual.

[2] The Director mistakenly indicated that the Applicant listed N-Y- in her July 2016 F-1 student nonimmigrant visa application. However, the Applicant listed her parents as her travel companions in that visa application.

a harmless misrepresentation. *See Matter of Martinez-Lopez,* 10 I&N Dec. 409, 414 (BIA 1964) (finding that the submission of a forged job offer in the United States was not material when the applicant was not otherwise inadmissible as a person likely to become a public charge); *Matter of Mazar,* 10 I&N Dec. 79, 86 (BIA 1962) (finding no materiality in the nondisclosure of membership in the Communist Party since the membership was involuntary and would not have resulted in a determination of inadmissibility). In other words, an applicant is not inadmissible for making a harmless misrepresentation even though the applicant misrepresented a fact. At her initial adjustment of status interview, the Applicant misrepresented that she had never dated N-Y- even though he was her boyfriend at the time of her June 2014 B1/B2 nonimmigrant visa application. However, the record does not establish that this misrepresentation is material as it did not shut off a line of inquiry relevant to her admissibility and would not have predictably disclosed other facts relevant to her eligibility for adjustment of status. Whether N-Y- was the Applicant's friend or boyfriend in 2014 is not relevant to any ground of admissibility or the Applicant's eligibility for adjustment of status, which is based on her marriage to her spouse.[3] Therefore, the Applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and the waiver application is moot.

ORDER: The appeal is dismissed.

[3] The Applicant filed her adjustment of status application as a derivative beneficiary of her spouse, who is the beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker.