U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22737530

Date: DEC. 20, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant 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 of material facts. 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. If the noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. Section 212(i) of the Act.

The Director of the Nebraska Service Center denied the application, concluding that the record did not establish that the Applicant's qualifying relative would experience extreme hardship if she were denied admission to the United States. The matter is now before us on the Applicant's appeal. On appeal, the Applicant contends that the Director erred by concluding that she is inadmissible and that she did not establish that her qualifying relative suffers extreme hardship.

The Administrative Appeals Office (AAO) 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

A noncitizen 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.

This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or LPR spouse or parent. Sections 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).

II. ANALYSIS

The issues on appeal are whether the Applicant is inadmissible for fraud or misrepresentation, and if so, whether she has demonstrated that her qualifying relative would experience extreme hardship if the waiver were denied. We have considered all the evidence in the record and conclude that the Applicant is inadmissible for fraud or misrepresentation. We further find that the Applicant has not established that the claimed hardships, if she were to remain separated from her qualifying relative, rise to the level of extreme hardship when considered both individually and cumulatively.

A. Inadmissibility

The record reflects that the Applicant testified to a consular officer that she and her spouse married in India in 1992 in a religious ceremony. The Applicant asserts that this marriage was not registered with any government authority. The couple had two sons, born in 1997 and 2001.

The Applicant's spouse traveled without her and entered the United States in 1997 with a nonimmigrant visa. He then married a U.S. citizen. The date of this marriage is unclear. The Applicant's spouse states in an affidavit submitted with the waiver application that the marriage took place in 2000. However, the Applicant's spouse's Form G-325A, Biographic Information, signed in 2007 and submitted with the Form I-130, lists the date of marriage as [redacted] 1999. The record does not include a divorce certificate or other evidence documenting the termination of the Applicant's 1992 marriage before her spouse remarried in the United States.[1]

The Applicant's spouse became a naturalized U.S. citizen in 2006 and divorced his U.S. citizen wife in [redacted] 2007. The Applicant's spouse returned to India and they married again. They registered their marriage with the Registrar of Marriage in [redacted] India on [redacted] 2007. The Applicant's spouse then filed Form I-130, Petition for Alien Relative, on behalf of the Applicant and their two sons.

During the Applicant's immigrant visa interview in 2009, she stated that she and her spouse first married in 2007. She did not disclose her prior marriage to her spouse in 1992.[2] The Consular Officer found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation of a material fact.

On appeal, the Applicant asserts that she is not inadmissible under section 212(a)(6)(C)(i) of the Act because her false representation was not material. She asks that we request removal of the inadmissibility finding from the U.S. Department of State. In the alternative, the Applicant requests

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[1] The Applicant also asserts that her spouse returned to India for a brief time in 2000 and she became pregnant with her second child who was born in 2001. The Applicant's spouse also had two children with his U.S. citizen wife, the first born in 2000 and the second born in 2002.

[2] We note that the Applicant's Form G-325A, signed in 2007 and submitted with the Form I-130, does not list any prior marriage. Her spouse's Form G-325A, also signed in 2007 and submitted with the Form I-130, lists only one prior marriage, to his U.S. citizen spouse from 1999 to 2007.

that we approve the waiver of her inadmissibility based on extreme hardship to her U.S. citizen spouse.[3]

The Applicant asserts that her misrepresentation of the date of her marriage was not material, as it "had no tendency to shut off a line of inquiry that was relevant to her own admissibility." She states that, even if she had disclosed to the consular officer both marriages to her spouse and his intervening marriage to another woman, the information "would not have reflected adversely on the factual bona fides of her marriage to [her spouse]." She points to her two biological children with her spouse as strong evidence that supports a bona fide marriage. She further states that her "failure to disclose that she had married [her spouse] before, rather than only after, his other marriage and naturalization as a U.S. citizen also did not become relevant to [her] admissibility by way of [her spouse's] possible simultaneous marriage to two wives." We disagree.

A misrepresentation is material under section 212(a)(6)(C)(i) of the Act when it tends to shut off a line of inquiry that is relevant to the noncitizen'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). An applicant applying for an immigrant visa as an immediate relative of a U.S. citizen must establish the *bona fides* of the claimed relationship. Section 204(a)(1) of the Act.

Here, the disclosure that the Applicant and her spouse were previously married, even to each other, was material and would have led to further inquiry about the Applicant's relationship with her spouse. While we acknowledge that evidence of children born of a marriage is strong support for the bona fides of that marriage, here both children were born before the couple's 2007 marriage, which is the basis of the Applicant's immigrant petition. Therefore, we consider the Applicant's children with her spouse to be evidence support for the bona fide nature of their prior relationship rather than of their 2007 marriage. As noted above, the Applicant's spouse disclosed only his prior marriage to a U.S. citizen on his Form G-325A submitted in support of the immigrant petition. Had the Applicant disclosed her earlier marriage to her spouse, the fact of her spouse's intervening marriage would have been evident. In misrepresenting these facts, the Applicant shut off a line of inquiry regarding the overall timeline of her relationship with her spouse. The relationship timeline, including the birth of the Applicant's second child with her spouse during his relationship with another woman, is relevant to the bona fides of the Applicant's marriage and the basis for her immigrant visa. Because the concealment of her prior marriage shut off a line of inquiry which was relevant to her visa eligibility, her misrepresentation was material, rendering her inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States by willful misrepresentation of a material fact.

B. Extreme Hardship

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives. An 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

[3] The Director denied a previous application to waive the Applicant's inadmissibility in 2013, concluding that she had not established extreme hardship to her qualifying relative. We dismissed an appeal of that decision in 2014 and affirmed the Director's denial.

of these scenarios is not required if an applicant's evidence establishes that 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 the qualifying relative would relocate with the Applicant, or would remain in the United States, if the applicant is denied admission. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (discussing, as guidance, extreme hardship upon separation and relocation).

The Applicant's qualifying relative is her U.S. citizen spouse. The Applicant's spouse indicates that it would be unreasonable for him to relocate to India if the Applicant's waiver application is denied. The Applicant must therefore establish that if she is denied admission, her qualifying relative would experience extreme hardship upon continued separation.

The record reflects that the Applicant's spouse resides with the couple's two adult sons, ages 25 and 21. The Applicant's spouse states that, for religious and cultural reasons, his adult sons will reside with and depend upon him until they marry. He asserts that he owns and operates a convenience store in the United States. He submitted an affidavit with the waiver application describing the financial hardships he experiences, including paying his son's college tuition, his mortgage, and child support for two children from his prior marriage. He states that his two sons are suffering because their mother is not present to care for them and that they are unable to afford trips to visit her in India.

The record includes the Applicant's spouse's 2020 Internal Revenue Service Form 1040, U.S. Individual Income Tax Return, which lists his adjusted gross income as $19,801. The record also includes a 2009 child support agreement ordering the Applicant's spouse to pay $960 per month in support for his children from his other marriage. In his affidavit, the Applicant's spouse asserts that he pays approximately $3,000 per month for his mortgage and household expenses. He further asserts that he had paid $40,000 to $50,000 in college tuition for his one son. The record includes a statement of his home loan account and evidence of tuition payments.

The Director concluded that the record was insufficient to establish a complete picture of the Applicant's spouse's financial situation and how he experiences financial hardship as a result of separation from the Applicant. On appeal, the Applicant submits a brief and no additional evidence.

The Applicant's claims of extreme financial hardship to her spouse are not supported by documentary evidence in the record. The Applicant does not claim that her spouse provides for her financially, or that she contributes financially to the family in the United States. The Applicant does not explain how she will alleviate her spouse's financial hardship if they are no longer separated. Although we acknowledge the difficulties the Applicant's spouse faces in operating his business and supporting his family, the record does not support that these difficulties are as a result of the Applicant's absence in the United States.

Although the Applicant's spouse states that his son's suffer from their mother's absence, the record does not support that this causes extreme hardship to the Applicant's spouse. The record includes a 2013 psychological report submitted with a prior application to waiver the Applicant's inadmissibility. In our previous decision in appeal of that application we noted that the report references the hardships that the Applicant's sons face as a result of separation from their mother, but it does not address the Applicant's spouse's hardships. For the purposes of this application, the Applicant's sons are not

qualifying relatives. Although the Applicant's sons are now ages 25 and 21, the record does not include an updated psychological report. As the Applicant's children are now grown adults, we cannot determine that the hardships they described in 2013 continue now. Further, the Applicant's spouse does not describe any emotional or psychological hardships he experiences.

Upon de novo review, the Applicant has not established by a preponderance of the evidence that her spouse would suffer extreme hardship upon separation or relocation. We acknowledge the Applicant's spouse's statement regarding the difficulties that separation from the family causes. However, the record as constituted does not rise to the level of extreme hardship. We acknowledge that the family's finances may be negatively impacted by the Applicant's continued separation. However, the record does not indicate that this impact is beyond the common results of separation from the Applicant.

Based on the record, we agree with the Director that the evidence submitted does not provide the detail and specificity necessary to make a finding that the claimed hardships amount to extreme hardship when considered either individually or cumulatively. Thus, the Applicant has not established that her spouse's hardships would go beyond the common results of separation and rise to the level of extreme hardship.

Considering all of the evidence relating to the financial situation of the Applicant's spouse in its totality, the record does not show that the financial hardships he would experience, even when aggregated, would be so exceptional or atypical that they would rise to the level of extreme hardship.

The Applicant must establish by a preponderance of the evidence that denial of the waiver application would result in extreme hardship to a qualifying relative both upon separation and relocation. Section 212(a)(9)(B)(v) of the Act; *Chawathe*, 25 I&N Dec. at 375; *see also* 9 *USCIS Policy Manual* B.4(B), (providing, as guidance, the scenarios to consider in making extreme hardship determinations). As the Applicant has not established extreme hardship to her spouse in the event of separation, we cannot conclude she has met this requirement.

ORDER: The appeal is dismissed.