U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23291903

Date: DEC. 21, 2022

Appeal of Fort Myers, Florida Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident (LPR) and 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 and misrepresentation of material facts. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The Fort Myers, Florida Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility. The Director concluded the Applicant did not establish extreme hardship to their U.S. citizen spouse, her only qualifying relative or that discretion should be exercised in their favor.

The matter is now before us on appeal. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review 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 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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility ground 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. Section 212(i) of the Act. If the foreign national demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

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).

Once the foreign national demonstrates the requisite extreme hardship, they must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N 296, 299 (BIA 1996).

II. ANALYSIS

The only issue on appeal is whether the Applicant has demonstrated their U.S. citizen spouse would suffer extreme hardship upon denial of the waiver application. The Applicant attempted to enter the United States using falsified documents under the name [redacted] in 1996. She withdrew her application for admission and was refused entry under the visa waiver program. Agency systems further reflect the Applicant used a second false identity, [redacted] also in 1996 in a separate attempt to enter the country. The record contains a photocopy of a nonimmigrant visa under a third identity, [redacted] bearing what appears to be the Applicant's photo on the visa.

After the Director determined the Applicant committed fraud to enter the United States and misrepresented material facts at the adjustment interview, they requested this waiver application to afford her the opportunity to have her inadmissibility grounds waived. The Applicant's filing indicated that her spouse, (J-),[1] would not relocate with her to Jamaica if she is denied admission as an LPR. The Director reviewed the Applicant's claims and concluded she did not demonstrate her qualifying relative would experience extreme hardship if she were denied admission as an LPR. The Director further exercised their discretion to conclude the waiver application should be denied on those grounds as well.

On appeal, the Applicant recounts J-'s medical complications and claims that without her financial assistance and her health insurance, he would be unable to pay his bills and he would be without medical insurance.

A. Continued Misrepresentations Adversely Effect of the Applicant's Claims

Additionally, due to the Applicant's repeated willingness to violate our immigration laws—some as recently as her adjustment of status interview—it is unclear what claims she advances in this waiver application are true and which are simply additional misrepresentations to further her efforts to permanently reside in the United States. In 2019, the Applicant filed the adjustment application, but indicated in the negative to the questions relating to whether she had been denied admission to the United States or submitted fraudulent or counterfeit documentation to obtain an immigration benefit or misrepresented any information on an application for a visa or other documentation required to enter the United States.

[1] We use initials to protect individuals' identities.

After the interviewing officer confirmed those responses, they took a sworn statement from the Applicant in which she stated: (1) the only other name she has ever used was [redacted] (so she did not admit to using the name [redacted] in 1996); (2) she expressly denied ever using the name [redacted] (3) she stated she had never used another date of birth other than the one on her adjustment application; (4) 1997 was the first time she attempted to come to the United States; and (5) she denied ever being in the United States in 1996. It appears the Applicant misrepresented material facts on her adjustment application and provided false testimony to the interviewing officer at her adjustment interview.

"[W]itnesses are prone to fudge, to fumble, to misspeak, to misstate, to exaggerate. If any such pratfall warranted disbelieving a witness's entire testimony, few trials would get all the way to judgment." *United States v. Edwards*, 581 F.3d 604, 612 (7th Cir. 2009) (quoting *Kadia v. Gonzales,* 501 F.3d 817, 821 (7th Cir.2007). Rather, the trier of fact must consider whether, as in *United States v. Connolly*, 504 F.3d 206, 215–16 (1st Cir. 2007), particular falsehoods in testimony so undermine one's credibility as to warrant disbelieving the rest of the testimony—or a critical part of it. *Edwards*, 581 F.3d at 612.

While we do not propose to vitiate all the Applicant's statements in the record, we are not able to determine which statements are accurate and true, and which are not.

B. Extreme Hardship

The Applicant must demonstrate that denial of the waiver application would result in extreme hardship to their qualifying relative or relatives, in this case her U.S. citizen spouse. An applicant may show extreme hardship under two scenarios: (1) if the qualifying relative remains in the United States separated from the Applicant, and (2) if the qualifying relative relocates with the Applicant to a foreign country. Here, the record contains a cover letter submitted with the waiver application indicating that even though J- does have ties to Jamaica, his relocation to that country "is not feasible." Additionally, on appeal, the arguments relate to the Applicant and J-'s separation. The Applicant must therefore establish that if she is denied admission, J- would experience extreme hardship upon her separation from him.

On appeal the Applicant disagrees with the Director's determination and claims that she demonstrated her spouse would experience extreme hardship, but she does not explain how the Director erred in their analysis. Simply disagreeing with the Director's decision and presenting similar arguments is generally not a sufficient basis upon which to file an appeal. Instead, the Applicant should explain and demonstrate how the Director came to the wrong conclusion and describe why the adverse decision was incorrect. It is insufficient to merely assert that the Director made an improper determination. Within an appeal, it should be clear whether the alleged impropriety in the decision lies with the interpretation of the facts or the application of legal standards. Where a question of law is presented, supporting authority should be included, and where the dispute is on the facts, there should be a discussion of the particular details contested. *Matter of Valencia*, 19 I&N Dec. 354, 355 (BIA 1986); *see also Matter of Keyte*, 20 I&N Dec. 158, 159 (BIA 1990). We will therefore briefly discuss the claims advanced on appeal.

Before the Director, the Applicant's attorney letter indicated J-'s wages covered the household expenses that included rent, utilities, and other household bills. Now on appeal, the Applicant claims he depends on her financially and she claims that J- failed the commercial driver's license (CDL) physical exam and he is unable to work. In support of that statement the Applicant indicated evidence relating to this was at Exhibit G, but the appeal does not include a list of exhibits with a document related to J-'s loss of his CDL license at Exhibit G, or at any other exhibit. The Applicant has not adequately supported this claim within the record, and she has not satisfied her burden of proof.

Another claim that differs from those submitted before the Director is that J- now relies on the Applicant's insurance benefits. Although the provided evidence reflects that J- is on the Applicant's health insurance, she did not identify evidence that he has used or relied on her insurance for his health care. The record does contain a [redacted] health insurance statement in J-'s name, but it does not contain any nexus to the Applicant's health insurance plan. The record, therefore, does not support the Applicant's claim that without her presence in the United States, J- would essentially be without health insurance and would experience difficulties in obtaining coverage with his current conditions.

The Applicant also offers additional evidence on appeal but does not explain its relevancy nor does she inform us of how we should apply those materials to her eligibility claims. For instance, affidavits and a psychological evaluation for J-. Although we could speculate about these materials, it is the Applicant's duty to inform USCIS how they support her claims. Additionally, regarding the psychological evaluation, although we acknowledge the mental health professional's diagnoses concerning J-'s mental health, we find that the evaluation contains the clinician's statements that appear to be legal conclusions regarding extreme hardship, which are outside the area of the clinician's expertise. For example, she stated: "***In their totality, the hardships are unusual and beyond those normally expected upon separation.***" (Emphasis in the original).

Within J-'s appellate statement, he describes the couple's history together and expresses how she assists him when he experiences issues with his back pain and migraine headaches. He notes that in her absence he will be in financial debt because he sometimes takes off from work due to his medical issues. Although he alludes to a CDL holder not being able to work if they do not pass their physical exam, he does not state that he has lost his CDL license for failure to pass such an exam.

Even considering the financial, medical, and emotional and psychological hardship claims in the aggregate, the Applicant has not shown that J- will be subjected to extreme hardship if she is denied admission to the United States as an LPR. Instead, it appears he will experience the types and level of hardship one would expect upon separation from their spouse after being removed from the United States.

III. POSSIBLE ADDITIONAL INADMISSIBILITY GROUND

Because the Director did not raise an additional issue in their adverse decision, and because the Applicant has not been afforded an opportunity to rebut the following, we only offer our observation to inform the Applicant of a possible additional ground of inadmissibility that she should be prepared to address in any future filing before USCIS or before an Immigration Judge. Ultimately, it appears the Applicant may also be inadmissible for not establishing she was inspected and admitted or paroled

during her most recent entry into the United States. This would make her inadmissible under section 212(a)(6)(A) of the Act.

The Applicant has claimed her most recent entry was on differing dates and in various statuses. On immigration applications from 2017 and 2018, she indicated she arrived on October 10, 1997, but that she was not inspected admitted or paroled. On another application from 2018, she used the October 10, 1997, date and indicated "NO VISA." On the Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application) she filed in 2019, she indicated she entered using a P-1 entertainer visa but left the date blank. It appears the interviewing officer annotated "10/10/1997" into that blank space during one of the Applicant's interviews. And on her waiver application that is before us on appeal, the form initially reflected "01/01/1997" and "No Legal Status," but that information was whited out and changed to "09/5/1997" and "B2 Visa." It does not appear the interviewing officer made these changes as they are not numbered and in red ink, which was present in the changes to the 2019 adjustment application.

She now claims she utilized the P-1 nonimmigrant visa on her most recent entry into the United States on October 10, 1997. The passport containing this nonimmigrant visa bears multiple immigration stamps and one of those stamps reflects an officer of the former Immigration and Naturalization Service (INS) stamped her passport on October 10, 1997, but it does not bear any date in the space where the officer would normally indicate the date the Applicant was admitted until. This same photocopied page reflects a Jamaican immigration stamp indicating she landed in that country on January 30, 1998. It is unclear how the Applicant claims her most recent entry into the United States was in 1997 when her passport clearly reflects she was outside the country in 1998.

Factual ambiguities are weighed against foreign nationals when the burden of proof rests with them. *See Pereida v. Wilkinson*, 141 S. Ct. 754, 763 (2021); *Ramirez-Medina v. Garland*, 21 F.4th 586, 589–90 (9th Cir. 2021) (finding that where the foreign person applying for an immigration benefit bears the burden of proof, factual ambiguities are weighed against them). Those ambiguities, and the attendant effects on their case, will be weighed and considered with the rest of the record.

The Applicant must resolve the inconsistent information in the record regarding the date and method of her last entry with independent, objective evidence pointing to where the truth lies. The failure to do so, results in the Applicant failing to satisfy their burden of proof to demonstrate admissibility clearly and beyond doubt. *See Matter of Bett*, 26 I&N Dec. 437, 440 (BIA 2014) ("an applicant has the burden to show that [they are] clearly and beyond doubt entitled to be admitted to the United States and [are] not inadmissible under section 212(a) of the Act.") (citations omitted).

Because the Applicant has: (1) obtained and used fraudulent documents to gain entry into the United States on multiple occasions; (2) throughout her dealings with this agency she has made inconsistent claims regarding the date and method of her entry into the United States; and (3) the anomalies with the inspection stamps (i.e., the Jamaican stamp that postdates the INS stamp), she seemingly has not satisfied her burden of proof to demonstrate she was inspected and admitted or paroled under any identity on her latest entry into the United States.

Based on the evidence the Applicant presented, she has demonstrated she was inspected and admitted or paroled on October 10, 1997. But she has also demonstrated through submitted evidence that the

former INS stamp does not represent her most recent entry into the United States because the Jamaican stamp's date (January 30, 1998) is subsequent to the date of the former INS stamp. It appears that the Applicant has not succeeded in demonstrating she was inspected and admitted or paroled after January 30, 1998, and it therefore appears she is inadmissible under a ground this waiver application cannot waive as one who is present in the United States without being inspected and admitted or paroled during her most recent entry.

IV. CONCLUSION

The Applicant is inadmissible because she repeatedly committed fraud in order to obtain an immigration benefit. The evidence in the record of proceeding, considered both individually and cumulatively, does not establish that the Applicant's U.S. citizen spouse would experience hardship beyond the common hardship endured by a family when USCIS does not waive inadmissibility. Therefore, the Applicant has not met the burden of proving that she is eligible for a waiver of inadmissibility.

ORDER: The appeal is dismissed.