U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20027417

Date: FEB. 14, 2022

Appeal of West Palm Beach, 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(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation. The Director of the West Palm Beach, Florida Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's qualifying relative, her U.S. citizen spouse, would experience extreme hardship if she were denied the waiver. The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and contends that her spouse would experience extreme hardship if her waiver were denied. 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 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. There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act. If the noncitizen demonstrates the existence of the required hardship, then they must also show that USCIS 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). In these proceedings, it is the applicant's burden to establish by

a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

Once the noncitizen demonstrates the existence of the required hardship, he or she must then show that USCIS should favorably exercise its discretion and grant the waiver. When exercising our discretion, we "balance the adverse factors evidencing a [noncitizen's] undesirability as a permanent resident with the social and humane considerations presented on the [noncitizen's] behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Matter of Mendez-Moralez,* 21 I&N Dec. 296, 300 (BIA 1996) (citations omitted).

II. ANALYSIS

A. Inadmissibility

The Director found that the Applicant willfully misrepresented her marital status when applying for a nonimmigrant visa at the United States Embassy in Port-au-Prince, Haiti on February 3, 2012. Specifically, she indicated on Form DS-160 that she was married, and provided her former husband's information, but the record indicates she divorced her former husband on [redacted] 2011.

Inadmissibility based on willful misrepresentation requires a finding that a person willfully misrepresented a material fact. *See* section 212(a)(6)(C)(i) of the Act. This finding requires the following elements:

- The person procured, or sought to procure, a benefit under U.S. immigration laws;
- The person made a false representation;
- The false representation was willfully made;
- The false representation was material; and
- The false representation was made to a U.S. government official, generally an immigration or consular officer.

If all of the above elements are present, then the person is inadmissible for willful misrepresentation. *See* 8 *USCIS Policy Manual* J.2(B), https://www.uscis.gov/policymanual.

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 that he or she willfully misrepresented a material fact in an attempt to obtain a visa, other documentation, admission into the United States, or any other immigration benefit. 8 USCIS Policy Manual J.3(A)(1), https://www.uscis.gov/policymanual.

On appeal, the Applicant resubmits the same brief prepared by her representative that was submitted in response to the Director's request for evidence (RFE), as well as a new statement from her United States citizen spouse. She first challenges whether her misrepresentation was willful, as she states that the form was completed by a third party and that there was no "intent to commit fraud."

A willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. *Parlak v. Holder*, 578 F.3d 457 (6th Cir. 2009). Here, the

record establishes that the Applicant's marriage ended nearly nine months prior to the filing of her nonimmigrant visa application at the embassy. Further, because applications are signed "under penalty of perjury," an applicant attests to their awareness of the form's contents and that their claims are truthful by signing and submitting the application or materials submitted with the application. See 9 FAM 403.3-6. Therefore, even if the Form DS-160 was completed by a third party as the Applicant claims, her signature (electronic or otherwise) on the form serves as an acknowledgment that she read the form and that all statements on the form were true and complete. We therefore conclude that the statement on the Applicant's Form DS-160 that she was married was made willfully.

Regarding whether the Applicant's statement regarding her marital status was a material misrepresentation, her spouse asserts on his statement on appeal that the issue of whether she was married or not was "not a condition to receive a tourist visa." 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 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).

To be issued a nonimmigrant visa to the United States, foreign nationals must overcome the statutory presumption found in section 214(b) of the Act, 8 U.S.C. § 1184(b), that they are intending immigrants. Therefore, in seeking nonimmigrant admission to the United States, a visa applicant must establish to the satisfaction of a U.S. State Department consular officer that they have no intention of abandoning their foreign residence.[1] In doing so, an applicant must demonstrate, among other factors, close family ties in the country of origin. Here, the Applicant's misrepresentation of her marital status was relevant to her admissibility as it shut off a line of inquiry into her nonimmigrant intent and was therefore material to her application for the visa.

As shown above, the Applicant's statement of her marital status to a U.S. consular officer was both willful and material, and thus we agree that she is inadmissible under section 212(a)(6)(C)(i) of the Act and requires a waiver.

B. Extreme Hardship

In order to qualify for a waiver under section 212(i) of the Act, the Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case her U.S. citizen spouse. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relatives remain in the United States separated from the applicant and 2) if the qualifying relatives relocate overseas with the applicant. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (providing, as guidance, the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. *See id.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002)). 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

[1] See 9 Foreign Affairs Manual 401.1-3(E), https://fam.state.gov/FAM/09FAM/09FAM040101.html.

applicant is denied admission. *See id.* In the present case, the record contains two statements from the Applicant's spouse in which he focuses solely on the consequences of the Applicant's separation from him. The Applicant must therefore establish that if she is denied admission, her qualifying relative would experience extreme hardship upon separation.

In his statement submitted with the Applicant's appeal, her spouse refers back to his initial statement noting that he is only working part-time due to health concerns, and that her removal from the United States would cause him medical, emotional, and economic hardship. Concerning his medical problems, the spouse states that he is working part-time due to the effects of type 2 diabetes, which include frequent urination, hunger, fatigue, and blurred vision. However, a medical report dated August 5, 2020 states that he "doesn't have any complaint at this time," and that he "denies frequent urination, polyphagia, polydipsia, weight loss or any other symptom related to Diabetes Mellitus." The report does stress healthy eating and exercise due to his diabetes diagnosis, which the spouse says the Applicant helps him with by preparing his meals. But the record does not show that his medical condition has affected his employment or ability to perform routine activities, or that he relies upon the Applicant to the extent that her absence would cause extreme hardship.

Regarding the economic impact on the Applicant's spouse were she to depart, he states that the Applicant is forced to work two jobs because of his inability to work full-time. He also indicates that he would need to send money to the Applicant in Haiti if she were to be removed, in addition to taking care of mortgage payments for a townhouse that the couple recently purchased with her brother. However, the record indicates that the Applicant was previously employed in Haiti, and does not include evidence that she would be unable to find employment if she were to be removed.

In addition, the record indicates that the Applicant's spouse is a self-employed truck driver and maintained a separate business bank account. While both of his statements indicated that he was working fewer hours due to health issues, the brief submitted in response to the RFE and on appeal indicate that he is working reduced hours due to the economic effects of the COVID-19 pandemic, and as noted above the medical report does not support his claims of symptoms related to diabetes. His employment status and economic reliance upon the Applicant is therefore not clear.

Further, the record lacks sufficient documentary evidence of his income and expenditures. The most recent tax return in the record, the couple's joint filing for 2018 submitted in support of the Applicant's adjustment of status application, shows a combined adjusted gross income of $28,920, but does not include IRS Forms W-2 to show how much of this income was earned by each of them. Also, the three months of bank account statements provide an incomplete picture of the couple's expenses, and are therefore not sufficient to provide an accurate picture of any economic hardship that would be faced by the Applicant's spouse upon her removal from the United States.

The Applicant's spouse also indicates that he would suffer emotional hardship if the Applicant's waiver application is not approved. A report from a licensed mental health counselor shows that he was assessed on January 29, 2021, and that he reports overwhelming stress and anxiety, decreased ability to focus and loss of sleep, but does not provide a prognosis or recommend treatment. We acknowledge that the Applicant's spouse feels anxiety about his spouse's potential removal, but the record does not demonstrate that he would experience emotional hardship which exceeds that which is part of the usual circumstances of such proceedings. See *Pilch*, 21 I&N Dec. at 630-31.

The record shows that the Applicant has two United States citizen children who live with her and her spouse. As they are not qualifying relatives for purposes of a waiver under section 212(i) of the Act, hardship to them can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002). The spouse expresses his sadness in having to explain their mother's situation to his stepchildren, and previously stated that he would not be able to care for them if the Applicant were to be removed. However, the record does not include evidence that he has sought, or would seek, legal guardianship over his stepchildren if they were to remain in the United States without their mother. In addition, if he were to have legal guardianship over the children, the spouse has indicated that most of his immediate family lives nearby, and the record does not include evidence that they would be unable or unwilling to assist him in caring for the children.

Although we address each specific hardship factor separately, we have considered the issues in the aggregate, *Matter of Ige*, 20 I&N Dec. at 882, but find that they do not rise above the common results of deportation. In summation, considering the record in its entirety, the record does not establish in the aggregate that the hardship the qualifying relative spouse would experience upon the Applicant's inadmissibility would rise above the common result of deportation to the level of extreme hardship. *See id.*

The Applicant must establish that denial of the waiver application would result in extreme hardship to a qualifying relative upon both separation and relocation. As the Applicant has not established extreme hardship to a qualifying relative in the event of separation, we cannot conclude she has met this requirement. As such, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion. Accordingly, the application remains denied.

III. CONCLUSION

The Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having willfully misrepresented a material fact to a U.S. government official while seeking a benefit under U.S. immigration laws, and is therefore inadmissible. In addition, she has not established that a qualifying relative would suffer extreme hardship upon separation from her, and therefore does not merit a discretionary waiver of her inadmissibility.

ORDER: The appeal is dismissed.