U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20566261

Date: FEB. 28, 2022

Appeal of Long Island, New York, Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks to adjust status to that of a lawful permanent resident, based on an approved Form I-130, Petition for Alien Relative, that her U.S. citizen spouse filed on her behalf. She also filed an Application for Waiver of Grounds of Inadmissibility, Form I-601, seeking a waiver of inadmissibility for fraud or misrepresentation under Section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). *See also* Section 212(a)(6)(C)(i) of the Act.

The Director of the Long Island, New York, Field Office denied the Form I-601 waiver application, concluding that the Applicant did not demonstrate that the denial would result in extreme hardship to her U.S. citizen spouse, her sole qualifying relative for the waiver application. *See* Section 212(i)(1) of the Act. On appeal, the Applicant submits additional documentation and contests her inadmissibility for fraud or misrepresentation under Section 212(a)(6)(C)(i) of the Act. In the alternative, she argues that she has shown the requisite hardship to qualify for the waiver, even if she were inadmissible.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also 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

Section 212(a)(6)(C)(i) of the Act provides: "Any alien 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 this chapter is inadmissible." If an applicant is found to be inadmissible under Section 212(a)(6)(C)(i) of the Act, he or she may seek a waiver of this ground of inadmissibility by filing a Form I-601.

To be eligible for a waiver of inadmissibility for fraud or misrepresentation under Section 212(a)(6)(C)(i) of the Act, an applicant must demonstrate that denial of the waiver would result in extreme hardship to his or her U.S. citizen or lawful permanent resident spouse or parent. Section 212(i)(1) of the Act. A determination of whether denial of the waiver would 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). 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). Moreover, 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).

In addition, if the applicant demonstrates the existence of the required hardship, then he or she must also establish that U.S. Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver application. *See* Section 212(i)(1) of the Act.

II. ANALYSIS

The record supports the Director's inadmissibility finding. The record shows that in 2003, when the Applicant was 18 years old, she submitted a Form I-485 (Application to Register Permanent Residence or Adjust Status), a Form G-325A (Biographic Information), and a birth certificate indicating that her parents were [redacted] and [redacted] These documents also list her middle name as her first name and do not disclose her actual first name. Through the filing, the Applicant claims that she was eligible to immigrate to the United States because she was [redacted]s child. As the Director noted in the decision, in 2004, when she was 19 years old, she appeared before a State Department official in the U.S. Embassy in Port-au-Prince, Haiti, for an interview associated with her Form I-485 and Form I-512 (Authorization for Parole of an Alien into the United States). After the interview, the State Department official asked her to submit additional supporting documents, which she failed to do.

In the Applicant's subsequent immigration filings, including her Form I-485, filed in 2019, she provided her actual name and indicated that her parents are [redacted] and [redacted] (now deceased). On appeal, she states that [redacted] who was listed as her father in the 2003 Form I-485, is her half-brother, with whom she shares the same father. She explains that she did not know [redacted] had filed the 2003 Form I-485 on her behalf, alleging that she "had nothing to do with the first petition [application] filed by [redacted]" and that "being a minor at the time and not being able or legally capable of self-petitioning at the time, negates the presence of fraud on her part."

For a misrepresentation to be willful, it must be determined that the applicant was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). To be willful, a misrepresentation must be made with knowledge of its falsity. *Id.* To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we "closely scrutinize the factual basis" of a finding of inadmissibility for fraud or misrepresentation because such a finding "perpetually bars an alien from admission." *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994); *see also Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*,

17 I&N Dec. 22, 28-29 (BIA 1979). Significantly, there is no statutory exception for minors to inadmissibility under Section 212(a)(6)(C)(i) of the Act.[1]

While the Applicant points out that she was a minor when she submitted the 2003 Form I-485, the record establishes that she was 18 years old when she signed the Form I-485. The 2003 Form I-485 notes that the Applicant signed the form "under penalty of perjury," and she attested that "th[e] application and the evidence submitted with it is all true and correct."[2] On appeal, the Applicant asserts that she "never saw the [Form I-485], did not sign [it] or participate in submitting any related document(s) at the time." She, however, has not submitted sufficient evidence to corroborate her claim.

Regardless, as noted, in 2004, the Applicant appeared for an interview before a State Department official, during which she continued to use her middle name as her first name, not disclosing her true first name, and alleged that she was eligible to immigrate to the United States as [redacted]'s child. In her appellate brief, the Applicant does not characterize her 2004 visit to the U.S. Embassy as an interview. Instead, she claims that she "physically appeared at the U.S. Embassy in Haiti to enquire as to the status of the [2003 I-485] filed by [redacted]' In her January 2021 statement, which she presents on appeal, she alleged that after she went to the U.S. Embassy, she learned from her father that [redacted] had filed immigration documents for her, claiming to be her father.

Even if we were to assume the veracity of her allegation – that she learned of the misrepresentation after her visit to the U.S. Embassy, the Applicant has offered no evidence to show that she attempted to retract the misrepresentation after learning about it. Rather, she stated in her 2021 statement that "I forgot about the purported interview, [and] moved on with my life." *See Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (providing "recantation must be voluntary and without delay"). Accordingly, the record supports the Director's finding that the Applicant is inadmissible for fraud or misrepresentation under Section 212(a)(6)(C)(i) of the Act, with respect to her 2003 Form I-485 and Form G-325A filing, as well as her 2004 interview before a State Department official, and must therefore seek a waiver of this inadmissibility under Section 212(i) of the Act.

The evidence that the Applicant has presented is insufficient to establish the requisite hardship. *See* Section 212(i) of the Act. Specifically, she has not shown that the adverse effects on her spouse from the denial of her Form I-601 waiver application are greater than what is expected or that they rise to the level of extreme hardship. *See Pilch*, 21 I&N Dec. at 630-31. The record includes a 2021 statement from the Applicant, stating that she is "in a good marriage with her husband," they "rely on each other for emotional support, each one having their [*sic*] own underlying medical conditions." According to her spouse's February 2020 statement, the Applicant provided him with emotional

[1] Where a provision is included in one section of law but not in another, it is presumed that Congress acted intentionally and purposefully. *In re Jung Tae Suh*, 23 I&N Dec. 626, 628 (BIA 2003)(citing *Matter of Rodriguez-Rodriguez*, 22 I&N Dec. 991 (BIA 1999)). Unlike Section 212(a)(6)(C)(i), two other grounds of inadmissibility in Section 212(a) contain express exceptions for minors. An exception is provided under Section 212(a)(2)(A)(ii)(I) of the Act for individuals who, prior to turning 18, committed a single crime involving moral turpitude more than five years prior to applying for admission. Also, individuals who are under 18 do not accrue unlawful presence pursuant to Section 212(a)(9)(B)(iii)(I) of the Act. By comparison, Section 212(a)(6)(C)(i) of the Act provides for the inadmissibility of "any alien" who commits fraud or willful misrepresentation of a material fact in an attempt to gain a benefit. The sub-clause does not include an age-based exception, and we cannot assume that Congress intended to include such an exception.

[2] 8 *USCIS Policy Manual* J.3(D)(1), https://www.uscis.gov/policy-manual/volume-8-part-j-chapter-3.

support when "[he] went through depression and accompanying symptoms." On appeal, the Applicant has not identified evidence in the record corroborating her or her spouse's medical conditions, or documentation demonstrating that the severity of the purported medical conditions rises to the level of extreme hardship. *See Pilch*, 21 I&N Dec. at 630-31. Additionally, the Applicant has not established that her spouse would not be able to manage his purported medical conditions in her absence.

We acknowledge that the Applicant's spouse would likely experience hardship upon separation from the Applicant, the record, however, fails to show the hardship exceeds that which is usual or expected. *See Pilch*, 21 I&N Dec. at 630-31. As noted, factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment are the "common result of deportation" and do not alone constitute extreme hardship. *See id.* While we recognize that the Applicant's spouse may be negatively affected upon separation from her, based on the record, we cannot conclude that when considered in the aggregate, that hardship goes beyond the common results of separation from a loved one or that it rises to the level of extreme hardship. *See* Section 212(i)(1) of the Act.

In this case, the record does not contain a statement from the Applicant's spouse specifically indicating whether he intends to remain in the United States or relocate with the Applicant to Haiti, if her Form I-601 waiver application were denied. The Applicant must therefore establish by a preponderance of the evidence that denial of her Form I-601 waiver application would result in extreme hardship to her spouse both upon separation and relocation. *See* Section 212(i)(1) of the Act; *Chawathe*, 25 I&N Dec. at 375; *see also* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual/volume-9-part-b-chapter-4 (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, and we need not consider hardship to her spouse in the event of relocation to Haiti. Additionally, based on our finding, we need not determine if the Applicant merits a waiver as a matter of discretion. Based on these reasons, we will dismiss her appeal.

III. CONCLUSION

The evidence before us sufficiently supports the Director's finding that the Applicant is inadmissible for fraud or misrepresentation under Section 212(a)(6)(C)(i) of the Act. In addition, when considered in the aggregate, the record fails to establish by a preponderance of the evidence that denial of her Form I-601 waiver application would result in extreme hardship to her U.S. citizen spouse. *See* Section 212(i) of the Act; *see also* Section 212(a)(6)(C)(i) of the Act. Accordingly, her waiver application remains denied.

ORDER: The appeal is dismissed.