



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 16341052

Date: FEB. 28, 2022

Appeal of Boston District 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 or willful misrepresentation. The Director of the Boston, Massachusetts Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant was admissible, or that his only qualifying relative, his U.S. citizen spouse, would experience extreme hardship if he were denied the waiver. The matter is now before us on appeal. In support of his appeal, the Applicant submits additional evidence and contends that his spouse would experience extreme hardship if his 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 remand the matter to the Director for the entry of a new decision consistent with the following analysis.

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 foreign national. 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.

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. 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).

II. ANALYSIS

The record indicates that the Applicant was admitted to the United States as a P-3 nonimmigrant on May 2, 2014 for the purpose of performing as a member of a music group participating in a culturally unique program at an event in [REDACTED] called the [REDACTED] Music Awards [REDACTED]. He has remained in the United States after the validity of the visa ended on May 26, 2014.

In his decision, the Director found the Applicant inadmissible because he had not established that he did not willfully misrepresent a material fact in obtaining his nonimmigrant visa, as the evidence was insufficient to show that he performed at the [REDACTED] and was truthful in stating the purpose of his trip to the consular officer. On appeal, the Applicant focuses on a statement in the Director's request for evidence pertaining to his Form I-485 application for adjustment of status that his inadmissibility was based on misrepresentations relating to the size of the group he was to have performed with at the [REDACTED]. However, as this issue was not raised as a ground of inadmissibility in the Director's decision on the waiver application, the Applicant's assertions that his statements regarding the size of the group were neither willful nor material are not relevant.

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 a noncitizen 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>. Misrepresentations are willful if they are "deliberately made with knowledge of their falsity." *Matter of Valdez*, 29 I&N Dec. 496, 498 (BIA 2018) (citations omitted). A misrepresentation is material when it has a "natural tendency to influence, or [be] capable of influencing, the decision of the decision-making body to which it was addressed." *Id.* (citation omitted).

Here, the Director's decision does not identify the specific misrepresentation made by the Applicant to the consular officer in his nonimmigrant visa application. In addition, the Director did not articulate why the questions relating to the Applicant's performance at the [REDACTED] would lead a reasonable person to find that he willfully misrepresented a material fact regarding his nonimmigrant intent. Accordingly, we withdraw the Director's decision and remand the matter for entry of a new decision.

On remand, the Director should consider whether the Applicant's statement in his nonimmigrant visa application that his primary occupation was a musician was a willful misrepresentation of a material fact in light of his more recent statements that he played the *dhol* as a hobby and source for supplemental income.

ORDER: The Decision of the Director is withdrawn, and the matter is remanded for the entry of a new decision consistent with the foregoing analysis.