U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21283504

Date: JUL. 7, 2022

Appeal of Chicago, Illinois 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 and seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). The Director of the Chicago, Illinois Field Office, denied the application, concluding that the Applicant did not establish extreme hardship to his U.S. citizen mother if the waiver is denied. On appeal, the Applicant contends that he timely retracted his false statements, and therefore, he is not inadmissible under section 212(a)(6)(C)(i) of the Act. The Applicant further contends that the Director erred by not including his legal permanent resident (LPR) spouse as one of the qualifying relatives and not considering extreme hardship to her. The Applicant provides additional evidence and asserts that a favorable exercise of discretion is warranted.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). Upon our de novo review, we will remand the matter to the Director for further proceedings.

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 U.S. citizen or lawful permanent resident spouse or parent of the noncitizen. 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).

II. ANALYSIS

The issues on appeal are whether the Applicant is inadmissible for fraud or willful misrepresentation and whether he has demonstrated his U.S. citizen mother and LPR spouse would suffer extreme hardship upon denial of the waiver.

A. Inadmissibility

On appeal, the Applicant asserts that he is not inadmissible for fraud or willful misrepresentation because he timely retracted the false information provided to the immigration officer and disclosed his true identity.

To be found inadmissible for fraud or willful misrepresentation, there must be at least some evidence that would permit a reasonable person to find that the foreign national used fraud or willfully misrepresented a material fact in an attempt to obtain an immigration benefit. The burden of proof is always on the Applicant to establish admissibility.[1]

The record indicates that the Applicant, a native and citizen of Mexico, entered the United States without inspection in [redacted] 1996.[2] A few days later, the Applicant was apprehended at [redacted] International Airport in [redacted] Texas, attempting to board a flight to [redacted] Texas. When questioned regarding his immigration status, the Applicant stated that he was born in [redacted] and presented an I-94, Arrival/Departure Record, containing a name and a date of birth which were not his.[3] The border patrol agent also noticed that the I-94 card contained an A number. Due to his claim to being U.S. born but presenting an I-94 card with an A number, the Applicant was referred to the secondary inspection. Upon further questioning, the Applicant stated that he was born in Texas, not in [redacted] The border patrol agent determined that the I-94 card the Applicant presented was fraudulent. The Applicant admitted to purchasing the I-94 card in Mexico for $35 and that he knew it was fraudulent. The Applicant has not provided sufficient information or evidence to establish that he did not claim to be a U.S. citizen and that he did not provide a fraudulent document to an immigration officer.[4]

An applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act if he or she timely and voluntarily retracts the fraud or misrepresentation. Matter of M—, 9 I&N Dec. 118, 119 (BIA 1960) (holding that attempted fraud must be corrected "voluntarily and prior to any exposure"); Matter of

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[1] 8 USCIS Policy Manual J, 3(A)(1), https://www.uscis.gov/policymanual.

[2] The record contains the Form I-213, Record of Deportable Alien, and its continuation page, Form I-831, which provide details surrounding the Applicant's apprehension at [redacted] International Airport.

[3] The record contains a copy of the fraudulent I-94 card the Applicant presented.

[4] Section 212(a)(6)(C)(ii)(I) of the Act provides that a noncitizen who, on or after September 30, 1996, falsely represents, or has falsely represented, themselves to be a U.S. citizen for any purpose or benefit under the Act or any other Federal or State law is inadmissible. Because the Applicant's claim to U.S. citizenship was prior to September 30, 1996, he qualifies for a waiver under section 212(i) of the Act.

Namio, 14 I&N Dec. 412, 414 (BIA 1973) (holding that where an alleged retraction "was not made until it appeared that the disclosure of the falsity of the statements was imminent [, it] is evident that the recantation was neither voluntary nor timely"). The USCIS Policy Manual states that for a retraction to be effective, an applicant must correct his or her representation before being exposed by the officer or U.S. government official or before the conclusion of the proceeding during which he or she gave false testimony. 8 USCIS Policy Manual J.3(D)(6), https://www.uscis.gov/policymanual.

Here, the Applicant claims that he timely retracted his false statements and provided his true identity to the border patrol agent. However, the record indicates the Applicant did not disclose his true identity until the border patrol agent took the Applicant to secondary inspection and questioned him about where he had obtained the fraudulent I-94 card. Additionally, the record indicates the Applicant pleaded guilty to a misdemeanor count of possession of a false identification document with intent to defraud the United States under 18 U.S.C. § 1028(a)(4). The record does not support the Applicant's contention that he timely retracted his false statements. We conclude that the Applicant has not met his burden of proof and agree with the Director that the record establishes the Applicant's inadmissibility for fraud or willful misrepresentation.

B. Extreme Hardship

The second issue on appeal is whether the Applicant has demonstrated qualifying relatives would experience extreme hardship upon denial of the waiver. The Applicant contends that the Director erred by only focusing on the extreme hardship to his U.S. citizen mother and not considering his LPR spouse as one of the qualifying relatives and the extreme hardship as it relates to her.

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 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. 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. 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/policymanual. On appeal, the Applicant asserts that neither his mother nor his spouse would consider relocating to Mexico and requests that his waiver be considered based on the separation hardships to his mother and his spouse.

On appeal, the Applicant submits additional evidence, among others, statements from the Applicant, his mother, and his spouse; psychological evaluations of his mother and his spouse that post-date the Director's decision; a letter from his son's physician; an article about autism; court dispositions regarding his arrests; and financial documents.

Upon review, we conclude that the record does not establish that the Director properly considered the evidence related to extreme hardship to the Applicant's spouse. As noted above, section 212(i) waiver requires a showing of extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the applicant. U.S. Citizenship and Immigration Services' electronic records reflect that the Applicant's spouse obtained her LPR status while the Applicant's waiver application was pending; therefore, the Director should have considered her as a qualifying relative and evaluate the extreme

hardship evidence as it relates to her. The Director should also consider hardship to qualifying relatives resulting from hardship to non-qualifying relatives, such as a child.

Accordingly, we will withdraw the Director's decision and remand the matter to the Director to properly consider all relevant evidence including the evidence submitted on appeal, which the Director has not had a chance to review. Upon remand, the Director may request any additional evidence considered pertinent to the new determination and any other issue to determine in the first instance if the Applicant has established extreme hardship to his spouse and his mother, and merits a favorable exercise of discretion.

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