U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21565727

Date: JUL. 14, 2022

Appeal of New York, New York Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for adjustment of status and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). 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 Director of the New York, New York Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (Form I-601). The Director granted the Applicant's subsequent motion to reconsider, but again denied the Form I-601, concluding that the Applicant had not established extreme hardship to his U.S. citizen spouse, his only qualifying relative, as required to demonstrate eligibility for the discretionary waiver under section 212(i) of the Act. On appeal, the Applicant asserts his eligibility for the waiver.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See 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, 8 U.S.C. § 1182(a)(6)(C)(i). A discretionary waiver of this ground of inadmissibility may be granted 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 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).

II. ANALYSIS

The record establishes that the Applicant is a citizen of Guyana. The Director determined the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact, and the Applicant, who is seeking adjustment of status, therefore filed this Form I-601 to seek a section 212(i) waiver of his inadmissibility. With the Form I-601, the Applicant submitted supporting affidavits, a psychological evaluation for his spouse, a letter from his spouse's doctor and other medical documents, country of origin information about Guyana, and financial documents including utility bills. These submissions include a statement by his spouse regarding the inadmissibility finding under section 212(a)(6)(C)(i) of the Act and the spouse's claim that she would suffer the extreme hardship if the Applicant is denied admission.

In denying the Form I-601, the Director determined that the Applicant was not eligible for a waiver under section 212(i) of the Act because he had not established extreme hardship to his U.S. citizen spouse. The Director acknowledged, among other hardship factors, the documentation regarding the spouse's medical and mental health conditions as well as concerns for the socioeconomic situation in Guyana. However, the Director found that the evidence did not sufficiently establish that the spouse would experience extreme hardship if the waiver is denied. The Director further determined that even if the Applicant had established extreme hardship to his spouse, he did not warrant a favorable exercise of discretion.

On appeal, the Applicant contends that he is not inadmissible for fraud or willful misrepresentation and, in the alternative, that he has established eligibility for a section 212(i) waiver of his inadmissibility, including the requisite extreme hardship to his U.S. citizen spouse. He submits a brief, a new letter from the spouse's doctor, and copies of previously-submitted evidence in support of his appeal.

A. Inadmissibility

The Director determined that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for falsely stating that he was married on his nonimmigrant visa application for a U.S. nonimmigrant visitor visa in November 2014 when he had never been married at the time. The Director further determined that the false statement on the application constituted a misrepresentation of a material fact, as it established ties to his home country that did not exist and shut of a line of inquiry that was relevant to his eligibility for a nonimmigrant visa.

The Applicant renews on appeal his claim that he is not inadmissible because he did not commit fraud or willfully misrepresent a material fact. He asserts that when he filled out his visa application, he

indicated that he was in a common law marriage. Further, the Applicant contends that he consistently stated that the marriage was a common law one in an interview related to his adjustment of status application and argues that USCIS has not provided evidence to refute that this is not the case.

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. Department of State (DOS) consular officer that they have no intention of abandoning their foreign residence. *See* 9 *Foreign Affairs Manual* 401.1-3(E), https://fam.state.gov/FAM/09FAM/09FAM040101.html. In doing so, an applicant must demonstrate, among other factors, close family ties in the country of origin. *Id.*

A misrepresentation is "material" if it tends to shut off a line of inquiry that is relevant to the noncitizen's admissibility and that would predictably have disclosed other facts relevant to their eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-*, 27 I&N Dec. 105, 113 (BIA 2017). The applicant has the burden to demonstrate that any line of inquiry shut off by the misrepresentation was irrelevant to the original eligibility determination. *See* 8 *USCIS Policy Manual* J.3(E)(4), https://www.uscis.gov/policymanual. The term "willful" does not require a specific intent to deceive, but requires knowledge of falsity, as opposed an accidental statement or one that is made because of an honest mistake. *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); 8 *USCIS Policy Manual, supra* at J.3(D).

Here, the record supports the Director's determination of the Applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act. The evidence indicates that the Applicant represented himself as married to C-A-L-[1] on his 2014 nonimmigrant visa application, which he signed attesting to the truth of its contents. *See Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018) (stating that a noncitizen's signature on an immigration application establishes a strong presumption that they know and have assented to the contents of the application, which they can rebut by establishing fraud, deceit, or other wrongful acts by another person). However, in a subsequent adjustment of status interview before USCIS, he disclosed that he had never been legally married to C-A-L-, who he instead identified as his common law spouse. The record also contains statements from both himself and C-A-L- each individually asserting that they had never been legally married. These statements are inconsistent with his representations on his visa application that he was married previously. We acknowledge the Applicant's argument on appeal that he consistently stated that he was in a common law marriage both on his nonimmigrant visa application and at his adjustment of status interview and that USCIS did not provide evidence to refute his explanation. However, the Applicant does not explain why he indicated his "marital status" as married on the 2014 nonimmigrant visa application if, as he asserts here, his common law marriage to C-A-L- was not a legal marriage in Guyana. Moreover, we note that it is the Applicant who bears the burden to establish his eligibility in these proceedings, including overcoming evidence of his inadmissibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. at 375. Here, he has not met this burden as he has not overcome evidence the record indicating that he willfully misrepresented his marital status on the visa application. Further, the record reflects that the Applicant's false statement on his visa application regarding his marital status is material as it shut off a line of inquiry directly related to his eligibility for a nonimmigrant visa in that it falsely

[1] We use initials to protect the privacy of individuals.

represented his family ties in his native Guyana to overcome the presumption under section 214(b) of the Act that he was an intending immigrant and render him eligible for a nonimmigrant visa. *See Matter of D-R-*, 27 I&N Dec. at 113.

The Applicant has not overcome evidence in the record indicating that he willfully misrepresented a material fact in order to procure a benefit under the Act. Accordingly, we find no error in the Director's determination that the record demonstrates that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and requires a waiver of that inadmissibility under section 212(i) of the Act.

B. Extreme Hardship for Purposes of a Section 212(i) Waiver

As stated, in order to establish eligibility for a waiver under section 212(i) of the Act, the Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or relatives, in this case his U.S. citizen spouse. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant or 2) if the qualifying relative relocates overseas with the applicant. Demonstrating extreme hardship under both scenarios is not required if an applicant's evidence establishes 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, supra,* at B.4(B). In the present case, the Applicant's spouse asserted in her statement before the Director that she intends to relocate with the Applicant if he is denied admission, although she also asserts that she would experience hardship upon separation.[2] The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship upon relocation.

The Director acknowledged the evidence of hardship to the Applicant's spouse upon relocation to Guyana, including financial, psychological, and medical hardships, but concluded that the Applicant had not established extreme hardship to his spouse in the event of relocation. In making this determination, the Director determined the Applicant did not show that the claimed socio-economic problems in Guyana that he asserted his spouse would face upon relocation were related to the couple's individual situation. The Director further concluded that a psychological evaluation for the spouse and a letter from her medical doctor submitted below did not contain sufficient details of the hardship she would experience if the Applicant's waiver application is denied. Finally, the Director noted that the spouse was able to work full-time despite claiming that she required the Applicant's presence to alleviate her lower back pain and labile hypertension.

On appeal, the Applicant reasserts that his spouse would experience medical, psychological, and financial hardship upon relocation with the Applicant. He argues that while his spouse typically works full-time, she is unable to go to work when she suffers a back spasm. The new letter from his spouse's doctor states that the spouse takes two medications and has been experiencing back spasms 8 to 10 times a year since 2016 which last three to four days and cause severe stress, anxiety, and elevated blood pressure. The doctor further asserts that the Applicant assists her with chores of daily living

[2] While the Applicant's spouse's statement is dated February 2019, this appears to be a typological error as the document reflects that she signed it before a notary in February 2021.

and that his availability is crucial to her physical and mental health and well-being. The Applicant contends when the spouse becomes incapacitated from back spasm episodes, she requires the Applicant's care for tasks such as bathing and dressing. Regarding psychological hardship, the Applicant states that the Director improperly gave limited weight to his spouse's psychological evaluation submitted below, which diagnosed her with Major Depressive Order and Generalized Anxiety Disorder and as currently experiencing suicidal ideation. Finally, the Applicant renews contentions that he and his spouse will have difficulty supporting themselves financially in his native Guyana due to socioeconomic problems.

We find that the Applicant has not established that the hardships that would result from his spouse's relocation, considered individually and cumulatively, would rise to the level of extreme hardship. With respect to the Applicant's assertion that his spouse would suffer psychological hardship upon relocation, we sympathize with the spouse's documented diagnoses, but we note that while the psychological evaluation recommends that the spouse seek psychotherapy and psychiatric treatment, the record does not indicate whether she has sought or is receiving such treatment. Although the evaluation generally asserts that the Applicant's spouse would not be able to get mental health treatment in Guyana, the Applicant has not submitted sufficient probative evidence demonstrating that such treatment is unavailable there. Regarding her medical hardship claims, we acknowledge the evidence in the record from the spouse's doctor and the spouse herself documenting her medications, the difficulties her back conditions create in her daily life, and the support the Applicant provides her. However, as stated, the record lacks specific evidence that the spouse could not receive treatment for these conditions in Guyana. We further note that if the couple relocates together, the spouse would presumably still have the Applicant's assistance in managing her condition as she currently does.

Turning to financial hardship, the Applicant contends that he and his spouse, who is a native of Guyana, will not be able to find employment in Guyana, but he did not support this contention with documentary evidence. We note that according to his 2014 nonimmigrant visa application, the Applicant had owned an electronics business in Guyana for 15 years. While we recognize the spouse's statement that she is trained in an industry that does not exist in Guyana and would have to start over after residing in the United States since 2002, as stated, a loss of employment or a decline in one's standard of living are common consequences of relocation that alone do not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. at 630-1 (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).

Lastly, the Applicant's spouse claims that she would experience hardship if she relocates to Guyana because of the crime and violence prevalent in the country. She notes that the DOS warns U.S. citizens against traveling to Guyana because violent crimes, including robbery and murder, are very common. Although we recognize that many areas of the world are prone to greater levels of crime and violence than the United States, the Applicant has not provided evidence that his spouse would be exposed to any specific danger where she intends to reside or would be unable to take measures to reduce the risks.

Accordingly, the record as a whole does not sufficiently establish that the Applicant's U.S. citizen spouse would suffer extreme hardship upon relocation in the event the Applicant is refused admission,

as required to establish eligibility for a section 212(i) waiver. Therefore, no purpose would be served in determining whether the Applicant merits the waiver as a matter of discretion.

III. CONCLUSION

The Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and has not demonstrated the requisite extreme hardship to a qualifying relative necessary to establish eligibility for a waiver of that inadmissibility under section 212(i) of the Act. Thus, the Form I-601 remains denied.

ORDER: The appeal is dismissed.