U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21736519

Date: JULY 15, 2022

Appeal of Memphis, Tennessee 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 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 if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Memphis, Tennessee Field Office denied the waiver application as a matter of discretion. The matter is now before us on appeal.[1]

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 *de novo* review, we will dismiss the appeal.

I. LAW

Any foreign national 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). The term "willfully" does not require a specific intent to deceive, but requires knowledge of falsity, as opposed to 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* J.3(D), https://www.uscis.gov/policymanual. A misrepresentation is material when an applicant would be inadmissible on the true facts or when it tends to shut off a line of inquiry that is relevant to the their admissibility. *See Matter of D-R-*, 27 I&N Dec. 105, 113 (BIA 2017); 8 *USCIS Policy Manual*, *supra*, J.3(E)(2).

[1] The Applicant filed a Form I-290B, Notice of Appeal or Motion, indicating he was appealing the denials of both his Form I-601, Application for Waiver of Grounds of Inadmissibility (receipt number [redacted]), and Form I-485, Application to Register Permanent Residence or Adjust Status (receipt number [redacted]). However, he has paid only one filing fee and, in any event, we do not have jurisdiction to adjudicate the appeal of the Form I-485. Therefore, this decision addresses only the denial of the Form I-601 waiver application.

There is a waiver available for this ground of inadmissibility if an applicant establishes by a preponderance of the evidence that refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the foreign national. Section 212(i) of the Act. If the foreign national demonstrates the existence of the required extreme hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. *Id.* We must balance the adverse factors of an applicant's undesirability as a lawful permanent resident with the social and humane considerations presented 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 296, 300 (BIA 1996). Adverse factors may include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the foreign national and their family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

II. ANALYSIS

In this case, the Director found that the Applicant had submitted a counterfeit divorce decree with a previous Form I-130, Petition for Alien Relative (receipt number [redacted]), filed by his second wife on his behalf, and Form I-485 adjustment application (receipt number [redacted]). The Director therefore concluded that the Applicant was inadmissible for having willfully made a material misrepresentation in order to gain an immigration benefit. The Director further found that the Applicant did not establish extreme hardship to a qualifying relative (his third and current wife), and that his repeated immigration violations outweighed the favorable factors in the case. The Director denied the application as a matter of discretion.

On appeal, the Applicant argues that he is not inadmissible because he did not knowingly or willfully make a false representation, did not seek to procure any immigration benefit, did not make a false representation to any immigration official, and did not make a material misrepresentation. He argues alternatively that if he is inadmissible, he has established the requisite extreme hardship to a qualifying relative (his current wife) and that the favorable factors in his case significantly outweigh any unfavorable factors, particularly considering the couple has four minor children, all of whom were born in the United States. He submits a new affidavit and a copy of a 2009 AAO decision in support of his appeal.

After reviewing the record in its entirety, including the evidence submitted on appeal, we agree with the Director that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and that he has not established that a favorable exercise of discretion is warranted. As noted above, and as the USCIS Policy Manual makes clear:

> The burden of proof to establish admissibility during the immigration benefit-seeking process is always on the applicant [and] never shifts to the government. . . . If there is evidence that would permit a reasonable person to conclude that the applicant may be

> inadmissible for fraud or willful misrepresentation, then the applicant has not successfully met the burden of proof. In these cases, USCIS considers the applicant inadmissible for fraud or willful misrepresentation, unless the applicant is able to successfully rebut the officer's inadmissibility finding. . . .

8 *USCIS Policy Manual*, *supra*, at J.3(A)(2); *see also* section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. at 375.[2]

We find that a reasonable person would conclude that the Applicant willfully misrepresented a material fact when he sought to adjust his status to that of a lawful permanent resident based on his second marriage. The record shows that the Applicant entered the United States as a visitor on July 1, 2017. Less than two months later, on [redacted] 2017, he married his second wife, a U.S. citizen. On February 1, 2018, the Applicant's second wife filed a Form I-130 relative petition on his behalf and he concurrently filed a Form I-485 adjustment application. Among other things, the Applicant submitted a copy of a Nigerian divorce decree which indicated that the Applicant and his first wife divorced on [redacted] 2017. The Form I-130 and Form I-485 were subsequently denied after the Applicant and his second wife twice failed to appear for their interview.

As the Director described in the notice of intent to deny (NOID) and in the denial decision that is currently before us, the divorce decree the Applicant submitted with his prior Form I-130 and Form I-485 was found to be counterfeit. In the NOID, the Director specified that there were several issues and inconsistencies with the divorce decree, including: the claimed docket number listed does not comply with any true court's numbering convention; the decree was dated "This Wednesday [redacted] 2017," when [redacted] 2017, was actually a Thursday; and the document indicated the parties were absent, while at the same time, it indicated that the Applicant's first wife testified in court. The Applicant does not contest on appeal that the divorce decree is counterfeit.[3] Rather, he argues, in part, that "[o]n the face of the decree, there appears to be no discrepancy which would have raised red flags" and that "there is no evidence that [he] had knowledge that it was not an authentic document." He further contends the Director never questioned the validity of the Applicant's current marriage to his third wife. He submits a new affidavit on appeal, claiming that he found the divorce decree "in the center of the table" when he moved back into his marital home in Nigeria and believed it was valid. He further claims that because his first wife has since passed away, there was no reason he needed to

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[2] The USCIS Policy Manual further provides:
[I]f the officer finds that the evidence for and against a finding of fraud or willful misrepresentation is of equal weight, then the applicant is inadmissible due to failure to meet the burden of proof. As long as there is a reasonable evidentiary basis to conclude that a person is inadmissible for fraud or willful misrepresentation, and the applicant has not overcome that reasonable basis with evidence, the officer should find the applicant inadmissible.
8 *USCIS Policy Manual*, *supra*, at J.3(A)(2).

[3] In response to the NOID, the Applicant, through counsel, argued that they are not sure how or why the docket number does not comply with a court's numbering convention, claimed that the incorrect day of the week appeared to be a typographical error, and asserted that the Applicant's first wife provided a written statement, but did not appear in court. However, we note that the unsupported assertions of counsel do not constitute evidence. *See Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (unsupported statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988). The Applicant submitted an affidavit in response to the NOID, attesting that his first marriage ended in divorce on [redacted] 2017, and that his first wife passed away on December 18, 2017.

submit an invalid divorce decree when he could have otherwise relied upon her death to demonstrate he was authorized to legally marry his current wife.

We do not find that the Applicant has sufficiently rebutted the Director's finding of inadmissibility. The Applicant's contention that he had no need to submit a fraudulent divorce decree because his first wife passed away prior to marrying his current wife is unpersuasive as it does not address his marriage to his second wife whom he married before his first wife's death. A reasonable person would conclude that the Applicant willfully (as opposed to accidentally) submitted a fraudulent divorce decree in order to demonstrate he was legally free to marry his second wife in his attempt to obtain lawful permanent resident status through this second marriage, an immigration benefit. It was also material because a misrepresentation regarding marital status tends to shut off a line of inquiry regarding the Applicant's eligibility to adjust his status based on his subsequent marriage to a U.S. citizen. In addition, the Applicant made the false representation to a U.S. government official when he submitted the counterfeit divorce decree to USCIS with his Form I-485 application to adjust status. To the extent the Applicant relies on a 2009 AAO decision, that decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c).[4] The Applicant has not met his burden of establishing his admissibility.

Because the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, he must show that a qualifying relative would suffer extreme hardship if he were denied admission, and that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. Here, even if the Applicant established extreme hardship to his current wife,[5] the only qualifying relative in this case, he has not demonstrated by a preponderance of the evidence that he warrants a favorable exercise of discretion. In addition to submitting a counterfeit divorce decree in order to obtain an immigration benefit, as the Director explained, the Applicant has also overstayed his B-2 visitor's visa and worked without authorization, unfavorable factors that he has not addressed. There is no evidence he has any property or business ties, or evidence showing that the Applicant's services are needed in the United States. Aside from a letter stating the Applicant is a good standing member of his church, there is insufficient documentation to show to what extent, if any, the Applicant contributes to his community. Although we acknowledge the Applicant's family ties in the United States as well as a letter from his church and his cousin describing him as a hard worker and good role model, considering the record in its totality, we do not find that the Applicant met his burden of establishing that the favorable factors in the case outweigh the negative ones. Accordingly, the application will remain denied.

ORDER: The appeal is dismissed.

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[4] In any event, the facts in the 2009 AAO decision are distinguishable from the instant case because in the 2009 case, the Applicant's only subsequent marriage was made after his former spouse had died. Here, the Applicant married his second wife before his first wife passed away.

[5] We need not reach the issue of extreme hardship and, therefore, reserve it. Our reservation of this issue is not a stipulation that the Applicant overcame this alternate ground of denial and should not be construed as such. Rather, there is no constructive purpose to addressing it because it cannot change the outcome of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015).