U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20603495

Date: JUN. 21, 2022

Appeal of Houston, Texas 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).

The Director of the Houston, Texas Field Office denied the application, finding that the Applicant had not established that a qualifying relative would suffer extreme hardship upon her removal from the United States.

On appeal, the Applicant contests her inadmissibility. Alternatively, the Applicant asserts that the Director erred in failing to consider the totality of the hardships both her lawful permanent resident mother and U.S. citizen father would face were she unable to obtain a waiver of inadmissibility.

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). This office reviews 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, as explained below, we will remand the matter to the Director for the entry of a new decision.

I. LAW

A 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 discretionary 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 noncitizen. 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).

If the noncitizen demonstrates the existence of the required hardship, then he or she must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the noncitizen to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N 296, 299 (BIA 1996).

II. ANALYSIS

The Applicant, a native and citizen of Pakistan, was found inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation. In summary, the Director determined that in December 1993, the Applicant attempted to procure entry into the United States by presenting fraudulent documentation. Further the Director stated that the Applicant had failed to disclose that attempted entry by fraud or misrepresentation on subsequent immigration applications "to conceal [the Applicant's] 1993 immigration fraud." The Director also noted that the Applicant had failed to disclose a previous removal order, and had made misrepresentations regarding her date of birth and last entry into the United States. The Director concluded that the Applicant had failed to establish extreme hardship to her U.S. citizen son and lawful permanent resident mother and denied the waiver application accordingly.

On appeal, the Applicant asserts that she is not inadmissible for fraud or willful misrepresentation. In the alternative, the Applicant contends that the Director misidentified her qualifying relatives for a waiver as her mother and son,[1] although she clearly identified her qualifying relatives as her lawful permanent resident mother and U.S. citizen father on her waiver application, and did not evaluate any of the evidence or arguments in favor of granting a waiver.

The Form I-546, Order to Appear, dated December 23, 1993, indicates that the Applicant "presented herself for inspection on [redacted] 1993 via United Airlines #943 at [redacted] International Airport. Subject presented herself as B-2 Visitors for Pleasure to [redacted] Texas. On the primary inspection line, [the immigration inspector] questioned the authenticity of the visa in the passport. Upon secondary inspection, it was determined that the visa was in fact counterfeit." With respect to this incident, the Applicant maintains that she "did not present the passport and visa herself; the "agent" she was accompanied by did that on her behalf, and furthermore, the Applicant "did not know the nature of the contents of either the passport or the visa, as she had never possessed or viewed either." She also maintains that she had given the agent her valid passport and believed that she was traveling on that same passport, and that the agent had procured a legitimate visa for her. The Applicant argues that the fraudulent documentation was obtained and presented to U.S. government officials by an agent and thus, the Applicant cannot be held to have willfully misrepresented information to the inspectors.

[1] Children are not qualifying relatives for purposes of a waiver of inadmissibility pursuant to section 212(i) of the Act.

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 an applicant 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. *See* 8 USCIS Policy Manual J.3(A)(1), https://www.uscis.gov/policymanual. The applicant has the burden of establishing at least one of the following facts to rebut the finding that a misrepresentation was willful: the misrepresentation was not made to procure a visa, admission, or some other benefit under the Act; there was no false misrepresentation; the false representation was not willful; the false representation was not material; or the false representation was not made to a U.S. government official. If, after assessing all the evidence, the applicant has established none of these facts, then the applicant has not successfully rebutted the inadmissibility finding. The applicant is therefore inadmissible because he or she has not satisfied the burden of proof. *See* 8 USCIS Policy Manual J.3(A)(2), https://www.uscis.gov/policymanual.

In the present matter, we find that the record establishes that the Applicant is inadmissible to the United States for fraud or willful misrepresentation based on her attempt to procure admission to the United States in 1993 with fraudulent documentation. As the Director correctly found, the above-referenced incident triggered inadmissibility under section 212(a)(6)(C)(i) of the Act. An applicant will be held responsible for a false representation made by an agent, including misrepresentations made at the border by someone assisting a person to enter illegally, if it is established that the applicant was aware of the action taken by the representative in furtherance of his or her application. *See* 8 USCIS Policy Manual J.3(C)(2), https://www.uscis.gov/policymanual. Furthermore, a person cannot deny responsibility for any misrepresentation made on the advice of another unless it is established that the person lacked the capacity to exercise judgment. *Id.* The record does not contain any documentation in support of the Applicant's assertion that she did in fact have a valid passport that she gave to her agent prior to her attempted entry into the United States in 1993. Nor does she provide any detail to support her claim that she believed the agent had prepared and submitted an application and obtained a valid nonimmigrant visa from the U.S. Consulate on her behalf.

In addition, we note that during the Applicant's I-485 interview, when asked if she was aware in 1993 that she had false documents, the Applicant answered, under oath, in the affirmative. She further stated to the immigration officer that she was provided with the false documents by an agent that family members found for her. The record thus establishes that the Director correctly determined that the Petitioner is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having attempted to enter the United States in 1993 with fraudulent documentation.[2]

We have considered all the evidence in the record and conclude that the Applicant is inadmissible to the United States pursuant to section 212(i) of the Act and requires a waiver of inadmissibility. We find it is necessary to remand the matter to the Director to fully consider whether the Applicant has

[2] As the record establishes that Applicant is inadmissible for fraud or misrepresentation with respect to her attempted entry to the United States in 1993, as discussed in detail above, and requires a waiver of inadmissibility under section 212(i) of the Act, we decline to reach and hereby reserve the Applicant's appellate arguments relating to the Director's additional findings of fraud or misrepresentation. *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) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

established: (1) extreme hardship to her qualifying relatives, including her U.S. citizen father,[3] and if so, (2) that she merits a favorable exercise of discretion.

Therefore, we withdraw the Director's decision and remand the matter to the Director to weigh the evidence in this case, including the documentation submitted on appeal, and issue a new decision that explains the basis of the Director's determination so that the Applicant fully understands the Director's conclusion. The Director may request any additional evidence considered pertinent to the new determination and any other issues. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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

[3] While the Director stated that all the evidence regarding extreme hardship had been weighed, we note that the Director did not specifically explain the reasons for denial to allow the Applicant a fair opportunity to contest the decision and provide us an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). The regulation at 8 C.F.R. § 103.3(a)(1)(i) states that when denying an application, the Director shall explain in writing the specific reasons for denial. We also concur with the Applicant that the Director misidentified her qualifying relatives.