U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20708598

Date: JUNE 23, 2022

Appeal of Denver 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 (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 misrepresentation of material facts. 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 Denver Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility.

The Director concluded the Applicant did not establish extreme hardship to their U.S. citizen spouse, her only qualifying relative. The Director further determined discretion should not be exercised in her favor. On appeal, the Applicant submits a brief and additional evidence, asserting their eligibility. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review 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 dismiss the appeal.

I. LAW

A 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). There is a discretionary waiver of this inadmissibility ground if 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 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 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). Once the foreign national demonstrates the requisite extreme hardship, they must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

II. ANALYSIS

A. Background

In 2003, the Applicant's first spouse filed a Form I-130, Petition for Alien Relative, on her behalf to classify her as the spouse of a U.S. citizen. That petition was approved in 2004, but after additional review by personnel from the U.S. Department of State and USCIS, two notices of intent to revoke (NOIR) the petition's approval were issued; the first in 2006, and the second in 2009. In 2006 the approval was reaffirmed, and in 2009 after receiving a response to the NOIR, the petition was administratively closed. Relating to this Form I-130, the Applicant used a year of birth that differed from the one she claims within these proceedings.

On a nonimmigrant visitor's visa application the Applicant filed with the State Department in 2015, she represented her prior marital history as being single rather than married or divorced when she had already been married to her first spouse. The Applicant also indicated that no one had ever filed an immigrant visa on her behalf even though her first spouse had filed the previously discussed Form I-130 on her behalf in 2003.

In addition to the visitor's visa application, in 2015 the Applicant's current spouse filed a Form I-129F, Petition for Alien Fiancé(e) on her behalf. Accompanying that petition, the Applicant completed a Form G-325A, Biographic Information, in which she claimed to have had no previous marriages. The Applicant entered the United States as a K-1 nonimmigrant fiancée in May of 2016. In November of the same year, the Applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application), that she signed under the penalty of perjury certifying "the information provided with this application is all true and correct. I certify also that I have not withheld any information that would affect the outcome of this application." Accompanying the adjustment application, the Applicant offered a new G-325A, again claiming to have no previous marriages.

In connection with her adjustment application, the Applicant attended an interview in June of 2017 at the USCIS Denver Field Office where an immigration officer placed her under oath and took her testimony. The Applicant returned for a second interview in October of 2019. During the 2017 interview, the following were some of the questions that were posed and answered:

- When asked if she had ever used a different name or any variation of her name, the Applicant's response was that she had not.
- When asked if she used a different date of birth at any time in her life, the Applicant's response was that she had not.

- When asked if she ever claimed to be a different age or claimed a different year of birth, the Applicant's response was that she had not.
- When asked if she had ever been married to anyone other than her current spouse who petitioned for her on the Form I-129F, the Applicant's response was that she had not.
- When asked if when she married her current spouse in 2016, was that her first marriage ever, the Applicant's response was that this was her first marriage.
- When asked if at any time in her life she had ever claimed anyone else as her husband, the Applicant's response was that she had not.
- When asked if she had ever applied for a visa before this fiancée visa from 2016, the Applicant initially answered yes, but then clarified that before this fiancée visa, no that she had not applied for any other visa.
- When the interviewing officer clarified pointing to the current fiancée visa petition and asked if that visa was the first visa she had ever applied for in her entire life, the Applicant's response was yes.

The interviewing officer subsequently asked the Applicant questions regarding her first spouse. They asked if she married someone by the name of her first spouse, and the officer indicated in the denial that she provided evasive answers. The officer proceeded and asked why she married him and the Applicant's initial response was that she did not understand the question. She then amended her statement indicating she could not provide an explanation, the relationship was nothing, and there was "no interest in the relationship there."

The Applicant later informed the officer that someone "pushed" her into the relationship with her first spouse and she informed the officer that "I married him because somebody introduced him to me, so he came and he said that he would do paper for me." The Applicant also initially indicated she did not live with her first spouse, but she amended that answer to claim she did live with him but was unable to provide the officer with the amount of time they lived together. The interviewing officer asked the Applicant whether she had a difficult time understanding her or whether she needed to take a break, but the Applicant responded that she understood and did not need a break. The interviewing officer noted at the end of the interview the Applicant apologized for having "lied."

In August of 2017, the Director issued a notice of intent to deny (NOID) the adjustment application. Within that notice, the Director detailed the above information and alleged that based on the record and the Applicant's responses to the officer's questions, the record strongly suggested she married her first spouse for the purpose of evading the immigration laws of the United States. The Director also alleged the Applicant had misrepresented material facts when applying for a visitor's visa, her fiancée visa, and in the adjustment application.

Responding to the NOID, the Applicant indicated she gave birth approximately one week before her adjustment interview and at the time of her interview she was taking Oxycodone for pain. The Applicant claimed that this meant she was unable to completely focus on the questions the interviewing officer asked her. She also claimed she did not have a clear memory of the questions that were asked of her on the date of her interview. The Applicant further discussed her interview with a State Department officer when she applied for her K-1 nonimmigrant visa, and she indicated the officer asked her about her previous marriage that she did not disclose on the visa application. She indicated she did not have a marriage certificate to verify the date and place of marriage, but she did

provide the original divorce order to the consular officer who subsequently issued the K-1 visa to her. Discussing her first husband, the Applicant indicated he traveled from the United States to Nigeria each year and she lived with him when he was in Nigeria. Following the issuance of the NOID on the adjustment application and the 2019 interview, the Applicant filed the waiver application in August of 2021.

After reviewing this material, the Director determined the Applicant was inadmissible for misrepresenting material facts when seeking an immigration benefit under the Act. The Director evaluated the Applicant's claims within the waiver application. The Director noted that the Applicant did not clearly claim whether her spouse—the qualifying relative—would remain in the United States or relocate to Nigeria. The Director considered the Applicant's claims relating to financial and medical hardships, and concluded those effects, even when considered cumulatively, did not demonstrate extreme hardship to her qualifying relative. The Director separately concluded the Applicant did not establish that she warranted a favorable exercise of discretion and ultimately denied the waiver application, which is now before us on appeal.

B. The Applicant is Inadmissible

On appeal, the Applicant contests she is inadmissible under section 212(a)(6)(C)(i) for misrepresenting material facts to U.S. Government official's while applying for immigration benefits. First, she claims there was nothing fraudulent about her first marriage. The Director presented the facts and allegations in the NOID on the adjustment application they relied on to conclude the Applicant's first marriage was to circumvent the immigration laws of the United States, and we incorporate them here by reference.

We are not performing an analysis to determine if the prohibitions under section 204(c) of the Act should preclude any petition approval (i.e., whether approval of any petition is precluded because the Applicant attempted or conspired to enter into, or entered into a marriage for the purpose of evading the immigration laws).[1] Nevertheless, similar to such an evaluation, we performed an independent review of all of the evidence in the record and came to the conclusion that it reflects it is more likely than not the Applicant entered into her first marriage to circumvent the immigration laws of the United States. As a result, we are not persuaded by the Applicant's claim that there was nothing relating to her first marriage that might adversely affect her admissibility.

In a similar vein, her appellate statements do not persuade us that the other instances of misrepresenting material facts the Director described should be withdrawn, and we conclude those should also serve as additional occurrences of this inadmissibility ground. When discussing the 2015 nonimmigrant visa application, the Applicant states the incorrect information on that form was due to language and communication issues as she did not speak or understand English very well at the time. Although the Applicant does not address any of the remaining instances of misrepresentation that the Director described in the waiver application denial, within her affidavit submitted on appeal she does claim she "never meant to lie nor commit any fraud as it is pointed out by the" Director.

[1] Section 204(c) determinations are generally made in the course of adjudicating a subsequent visa petition. *Matter of Pak*, 28 I&N Dec. 113, 117–18 (BIA 2020) (citing *Matter of Tawfik*, 20 I&N Dec. 166, 167–68 (BIA 1990)).

Focusing on the claims made on immigration forms throughout her interactions with USCIS and the State Department, a foreign national's signature on an immigration application establishes a strong presumption that they know of and have assented to the contents of the application—to include the supporting documents—but they can rebut such a presumption by establishing fraud, deceit, or other wrongful acts by another person. *Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018) (citing *Thompson v. Lynch*, 788 F.3d 638, 647 (6th Cir. 2015)). The Applicant here has not rebutted such a presumption by showing another person deceived them into providing materially inaccurate information on immigration-related documents. The Applicant has not overcome this presumption with her statement denying culpability.

Turning to the Applicant's statements made to the USCIS officer in 2017 and 2019, she claims at the 2017 interview, she was taking Oxycodone after giving birth by C-section approximately one week earlier and it was the effects of this drug that resulted in her responses the officer determined were misrepresentations of material facts. In response to the NOID, the Applicant offered hospital records reflecting a recommendation that she take Oxycodone for pain. It is unclear from the medical records whether she obtained this drug from a pharmacy, but regardless the Applicant does not offer evidence establishing the cognitive effects of Oxycodone that might mitigate the inaccurate information she provided during the 2017 interview. Although the influence of a prescribed drug could have some effects on the Applicant's testimony, her burden is to prove she is admissible clearly and beyond doubt. *See Matter of Bett*, 26 I&N Dec. 437, 440 (BIA 2014) ("an applicant has the burden to show that [they are] clearly and beyond doubt entitled to be admitted to the United States and [are] not inadmissible under section 212(a) of the Act.") (citations omitted).

The lack of evidence relating to the effect of the drug in question leaves us unable to find in the Applicant's favor on this issue. The extent of that effect remains in question and because she must clearly and beyond doubt establish she is not inadmissible, we are not prepared to completely ignore all of her statements at that time, and the record does not support her in that effort as it relates to her 2017 testimony.

At the second interview in 2019, the Applicant explained in her statement that she had never used an incorrect year of birth on any immigration forms. She explained the incorrect year she used on the Form I-130 her first spouse filed was due to an incorrect birth certificate as well as her marriage certificate that displayed the incorrect birth year. It was those documents displaying the incorrect year she used in support of the Form I-130. The USCIS officer asked if she had either of those documents and she indicated she had misplaced them and no longer possessed them. After numerous questions relating to her marriage to her first spouse and traditional marriage in Nigeria, the Applicant denied that her first marriage was primarily to facilitate her lawful permanent resident status in the United States.

The 2019 interview closed with the officer asking why she was not truthful on her visa applications and immigration forms claiming she had never been married before. The Applicant explained she did not have the marriage certificate for her first spouse "to prove the place and the date of the marriage," but she did not offer a further explanation of why that lack of documentation led her to provide materially inaccurate information when applying for benefits under the Act. Although we accept the Applicant's statements, we do not condone providing false information because of a lack of documentation to demonstrate a material question on a visa application. The fact remains she sought

to procure a benefit under U.S. immigration laws while willfully making a materially false representation to a consular officer and those elements demonstrate she is inadmissible under section 212(a)(6)(C)(i). 8 *USCIS Policy Manual*, J.2(B), https://www.uscis.gov/legal-resources/policy-memoranda.

C. Extreme Hardship

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 an applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. An 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. *See* 9 *USCIS Policy Manual*, *supra*, at B.4(B).

On appeal, the Applicant claims extreme hardship to her qualifying relative under both separation and relocation. She claims her qualifying relative will experience the following types of hardship: psychological and medical, financial, and familial care and separation. She offers a new affidavit from herself, a psychological evaluation for her spouse, new medical documentation for her spouse, support letters from their acquaintances, and several forms of previously submitted documentation. Among other factors, the Applicant claims family ties and country conditions in Nigeria as elements we should consider in the exercise of discretion.

As it relates to the Applicant's hardship claims upon her separation from her qualifying relative, while she disagrees with a couple of instances of how the Director characterized the effect of her removal from the United States and the effect on the family unit, she does not allege any errors on the Director's part such as their failure to even consider her claims or evidence. The Director discussed the financial hardships the qualifying relative would experience. The Director noted it appeared that even in her absence, the income his businesses generate should cover any additional costs he would likely incur if it became necessary for him to hire someone to perform the business and personal functions that the Applicant performs.

Within the appeal, the Applicant does not agree that the Director took the actual costs into account to replace her services. The Applicant states any profits that the business has generated in the past with her assistance would be depleted leaving little to no finances to provide care for their children in the home. The Director considered this as an independent hardship as well as one in the aggregate within the decision denying the waiver application. The Director also considered the qualifying relative's diabetic condition and the effect of the Applicant's absence on his condition. The Director noted she did not establish he would be unable to receive treatment for this illness were she to be removed from the United States. Although the Applicant's spouse notes in his affidavit that she helps with his diabetic condition by ensuring a proper diet, she did not show designing a diet plan that is more appropriate for a diabetic is something her spouse could not achieve in her absence. The Director also incorporated the stress the Applicant's absence would have on the family unit.

On appeal, the Applicant offers a psychological evaluation jointly evaluating her as well as the qualifying relative. Based on the single visit with both individuals, the clinician determined the qualifying relative is experiencing severe anxiety and moderate depression. The clinician noted the qualifying relative's increased economic responsibilities and other life stressors would increase if the Applicant were separated from the family. But the evidence does not show these conditions affect the spouse's ability to work as the owner and operator of his nursing home businesses or engage in other activities. Nor is there evidence the spouse relies on the Applicant's help in managing his psychological symptoms aside from her general emotional support, or that he is otherwise dependent on the Applicant for care. Although the qualifying relative stated he will experience anxiety and distress without the Applicant's presence and care, the submitted evidence does not document in detail how the Applicant's spouse would experience emotional or health-related hardship exceeding that which is usual or expected due to separation. Nor does the record establish the spouse would not be able to obtain the necessary treatment in the Applicant's absence.

Turning our focus to the claims relating to her spouse relocating to Nigeria, the Director did not address this element and her main claims on appeal relate to poverty, the danger the family would experience in Nigeria because of their religious beliefs, and her spouse would be deprived of his relationship with his children from another marriage because those children would continue living in the United States. First, the record lacks a statement from the Applicant's spouse certifying under penalty of perjury that he would relocate with her if she were denied admission. *See* 9 *USCIS Policy Manual*, *supra*, at B.4(B). At best, his affidavit discusses the reasons it would be untenable to accompany her to Nigeria. Still, anticipated results such as separation from family or financial hardships are not sufficient to meet the extreme hardship test. *Cervantes-Gonzalez*, 22 I&N Dec. at 568.

Regarding the family's religion, those claims were presented within the appeal brief that was prepared by the Applicant's counsel, but not by the Applicant or her spouse. Without documentary evidence to support the claim, counsel's statements will not satisfy the Applicant's burden of proof. Counsel's unsupported claims do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, even though the Nigeria 2020 Human Rights Report the Applicant submitted discussed the conflict between religious faiths in Nigeria, it contained a link to the State Department's Report on International Religious Freedom that indicated the "country is roughly evenly divided between Muslims and Christians." *2021 Report on International Religious Freedom: Nigeria*, U.S. Department of State, https://www.state.gov/reports/2021-report-on-international-religious-freedom/nigeria/. Additionally, the Applicant did not establish that Nigerian citizens are regularly granted refugee or asylee status based on their Christian religion.

We recognize the importance of family unity and the ability of parents and caregivers to provide for the welfare of children. A primary caretaker's inadmissibility can result in a shift of caregiving responsibility to the qualifying U.S. citizen relative, which may, in turn, affect the qualifying relative's ability to earn income for the family. However, after review of the evidence submitted with the waiver application and on appeal, we will affirm the Director's decision. The record does not establish extreme hardship in all scenarios. Specifically, the record does not show the qualifying relative would suffer extreme hardship if he remained in the United States and the Applicant moved to Nigeria. In that scenario, the U.S. citizen spouse would likely be able to continue running his businesses with the addition of an employee and by employing someone for the caregiving role for the children in the

home. The record also does not sufficiently document the anticipated nature and severity of any psychological and emotional harm the Applicant claims her U.S. citizen spouse would suffer upon separation.

The Applicant's concerns relating to the difficulties her family will experience are not lost on us. But we are still tasked with making a decision of whether the claims and evidence they have presented meet the elevated aggregate level of extreme hardship if she is required to separate from the family. And in this case, based on this record, we decide that she has not satisfied this test that requires a level of adversity exceeding what is usual or expected in a situation where at least one family member is uprooted and removed from the familial group. Even considering all the evidence in its totality, the record remains insufficient to show the aggregated financial, physical, psychological, and emotional hardships of separation would be unusual or atypical to the extent they rise to the level of extreme hardship. The appeal must also be dismissed as the Applicant has not demonstrated her qualifying relative would experience extreme hardship if he were to relocate to Nigeria.

As the Applicant has not demonstrated her qualifying relative would experience extreme hardship, no purpose would be served in addressing the Director's separate determination that the record does not demonstrate she merits a waiver as a matter of discretion. Because our identified basis for the waiver application's denial is dispositive of this appeal, we decline to reach and hereby reserve the Applicant's remaining appellate arguments relating to discretion. *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 M-F-O-*, 28 I&N Dec. 408, 417 n.14 (BIA 2021) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

In short, we conclude the record does not establish extreme hardship to the U.S. citizen spouse if the Applicant is denied admission.

ORDER: The appeal is dismissed.