U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19863088

Date: MAY 17, 2022

Appeal of Harlingen, Texas Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Guatemala, has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides for a waiver of this inadmissibility if denial of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen.

The Director of the Harlingen, Texas Field Office denied the application, concluding that the record established that the Applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact. The Director further concluded that the record did not establish, as required, that denial of admission would result in extreme hardship to the Applicant's qualifying relative, his U.S. citizen spouse. On appeal, the Applicant denies that he is inadmissible for fraud or willful misrepresentation of a material fact. The Applicant further asserts that his qualifying relative spouse would experience extreme hardship in the event the Applicant is not granted a waiver of inadmissibility.

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

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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent. Section 212(i) of the Act, 8 U.S.C. § 1182(i). 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. *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 Applicant presents two issues on appeal: 1) whether he is inadmissible for fraud or willful misrepresentation of a material fact; and 2) whether his qualifying relative would experience extreme hardship if the waiver is denied. We address each issue separately below.

A. Fraud or Willful Misrepresentation of a Material Fact

The Director found the Applicant inadmissible for willfully misrepresenting a material fact to obtain an immigration benefit request.[1] First, the Director discussed a U.S. Department of State Form DS-156, Nonimmigrant Visa Application, that the Applicant submitted on August 12, 2008. The Form DS-156 stated that, at that time, he was married to M-C-L-K-. However, the record contains a copy of a marriage certificate, and an English translation of it, indicating that he married his current spouse, a U.S. citizen, not M-C-L-K-, in 2006. The record does not establish that the Applicant divorced his spouse prior to August 12, 2008, and that he subsequently married M-C-L-K-. Moreover, the applicant's current spouse asserted in a statement dated March 2021, submitted in support of the Form I-601, Application for Waiver of Grounds of Inadmissibility, "[the Applicant] and I have been married since [redacted] 2006."

On appeal, the Applicant asserts that he had explained in an interview "that his Guatemalan identification document had not been properly updated by Guatemalan authorities and that this had caused the incorrect marital status to appear on the nonimmigrant applications." The Applicant further asserts that he "showed the USCIS adjudicator his current Guatemala identification card where it still showed his marital status as single."

[1] A finding of willful misrepresentation of material fact against an Applicant requires the following elements:

- The Applicant procured, or sought to procure, a benefit under U.S. immigration laws;
- The Applicant made a false representation;
- The false representation was willfully made;
- The false representation was material; and
- The false representation was made to a U.S. government official.

See 8 USCIS Policy Manual J.2(B), https://www.uscis.gov/policymanual.

Despite the Applicant's assertions on appeal, the Applicant also certified on the Form DS-156 that he understood the form and that "the answers I have furnished on this form are true and correct to the best of my knowledge and belief," including the statement that he was married to M-C-L-K- in 2008 when he submitted the nonimmigrant visa application to the U.S. Department of State. The Applicant further certified that he understood "that any false or misleading statement may result in the permanent refusal of a visa or denial of entry into the United States." Whether Guatemalan authorities had properly updated his identification document does not provide a defense to the Applicant willfully submitting a Form DS-156 to the U.S. Department of State in 2008, falsely indicating that he was married to someone other than his spouse since 2006.[2] An applicant's marital status—and an applicant's spouse's citizenship and country of residence—is material to a nonimmigrant visa application because it indicates whether the applicant intends to return to the country of residence. *See* section 214(b) of the Act (requiring nonimmigrant intent, with limited exceptions). Therefore, the Applicant's willfully misrepresented marital status on the Form DS-156 is fact that is material to the immigration benefit he sought. Accordingly, the Director correctly concluded that the Applicant is inadmissible for willfully misrepresenting a material fact in order to obtain a benefit request. *See* section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The Director also addressed a second material fact that the Applicant willfully misrepresented to obtain an immigration benefit. The Applicant stated during an interview on December 15, 2020, in connection with a Form I-485, Application to Register Permanent Residence or Adjust Status, that he began living in the United States on February 11, 2020, the date he reported that he last entered the United States on the application. However, in another interview on April 12, 2021, the Applicant stated that he had lived in the United States unlawfully approximately between the years 1999 to 2005 and again from 2009 to the present.

On appeal, the Applicant "maintains he as [*sic*] not living in the United States during those periods as he had maintained lawful nonimmigrant status during the periods in question." He further asserts that he had "testified that he frequently traveled from Guatemala to the United States because of his business and that he was always inspected and admitted to the United States and never stayed beyond the periods authorized by immigration authorities." However, the Applicant does not submit on appeal or otherwise discuss documentary evidence in support of his assertions, such as documentation of the dates on which he actually entered and departed the United States during the periods in question, evidence of residence abroad such as leases and utility bills for a particular physical address, or similar documentation. Applicants bear the burden of establishing eligibility for requested benefits. Section 291 of the Act, 8 U.S.C. § 1361.

Despite denying unlawful presence in the United States, on appeal the Applicant asserts that he and his spouse "have never lived apart since they have been married" and the record contains a copy of a lease for a residence in Texas—matching the Applicant's address of record as of the filing date of this appeal—for "2 adults – 2 childs [*sic*]," for the period of May 1, 2014, through May 1, 2015, before February 11, 2020. Furthermore, on the 2020 Form I-485, the Applicant asserted that he had resided at that address from "01/01/2014" until "present." Therefore, the Applicant has not overcome the Director's conclusion that the Applicant willfully misrepresented his dates of residence in the United

[2] The Applicant's signature on this application "establishes a strong presumption" that he knew and assented to the contents. *Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018).

States during interviews in connection to his adjustment application. The period or periods in which the Applicant unlawfully resided in the United States prior to applying to adjust status are material to whether he is eligible to adjust status. *See* section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i) (providing that a noncitizen who has been unlawfully present in the United States for a period of more than 180 days is inadmissible for three or 10 years after the noncitizen's departure or removal, depending on the duration of unlawful presence). Accordingly, the Director correctly concluded that the Applicant is inadmissible for willfully misrepresenting a material act in order to obtain a benefit request. *See* section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

B. Extreme Hardship

The second issue on appeal is whether the Applicant's qualifying relative would experience extreme hardship if the waiver is denied. 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. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (providing, as guidance, the scenarios to consider in making extreme hardship determinations). 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. *See id.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002)). An applicant may meet this burden by submitting a statement from a 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 waiver is denied. *See id.*

On appeal, the Applicant asserts that his spouse, a U.S. citizen, "will experience hardship both upon separation and relocation." In support of the application, the Applicant submitted a one-page letter from his spouse. The Applicant did not submit an additional statement from his qualifying relative spouse on appeal. Accordingly, we limit our analysis to the hardship the Applicant's spouse addressed in the letter submitted in support of the application.

The Applicant's spouse did not specifically state whether she would remain in the United States or join him abroad. Instead, she stated, "I fear that I will not be able to provide the financial security that [the Applicant] can provide for us." She further asserted, "I not only need [the Applicant] for financial support, but for emotional support as I have been married to my best friend for more than 10 years and I cannot imagine a life in which I will not be able to continue to see him by my side." She added that she "cannot bear the thought of our family getting separated if this I-601 waiver does not get approved." She also referenced "anxiety that I get thinking that we might have to go back to . . . political corruption and ongoing gang violence" in Guatemala.

Although the Applicant's spouse shared her "fear" that she will be unable "to provide the financial security that [the Applicant] can provide for us," she did not elaborate on her employment status, her income, her household expenses, the Applicant's employment status, how the Applicant's income may be affected by removal, why the Applicant cannot continue to support his spouse and children after removal, or other specific information about her fears about financial security. The record establishes that the Applicant buys and resells automobiles. The record does not establish why the Applicant would be unable to continue buying and reselling automobiles in order to maintain his family's

financial security, either upon separation or upon the Applicant's spouse joining him abroad. Accordingly, the Applicant has not established how the financial hardships his spouse may experience upon separation or joining him abroad would go beyond the common results of removal and rise to the level of extreme hardship. *See Matter of Pilch*, 21 I&N Dec. at 630-31.

Next, although the Applicant's spouse references needing the Applicant for "emotional support" and wanting to "see him by [her] side," she does not elaborate on any particular medical or psychiatric diagnosis that requires the Applicant to provide direct emotional support to her. The record does not establish why the Applicant's spouse would be unable to maintain contact with the Applicant upon separation through common means of communication, such as phone calls, video calls, SMS and email messaging, or by visiting the Applicant abroad. We note that this hardship does not appear to relate to joining the Applicant abroad. Similarly, although the Applicant's spouse references "anxiety" she experiences when thinking about "political corruption" and "gang violence" in Guatemala, the record does not establish that she has been diagnosed with—and requires treatment for—any particular psychiatric condition related to that anxiety. Accordingly, the Applicant has not established how the emotional hardships his spouse may experience upon separation or joining him abroad would go beyond the common results of removal and rise to the level of extreme hardship. *See id.*

The Applicant also asserts on appeal that he has made "financial and familial effort[s] involved in getting [his] children through college." To the extent that paying for the Applicant's children's college education relates to his qualifying relative spouse's financial, emotional, or other hardship, the record does not establish why the Applicant would be unable to provide the same "financial and familial effort[s]" while continuing to operate two motels in Guatemala and continuing to buy and resell automobiles, and maintaining contact with his family through common means of communication discussed above. Accordingly, the Applicant has not established how the financial or emotional hardships his spouse may experience upon separation or joining him abroad would go beyond the common results of removal and rise to the level of extreme hardship. *See id.*

Although we address each specific hardship factor identified on appeal separately, we have considered the issues in the aggregate, *Matter of Ige*, 20 I&N Dec. at 882, but find that they do not rise above the common results of removal. In summation, considering the record in its entirety, the Applicant has not established by a preponderance of the evidence that denial of the waiver would result in extreme hardship to his spouse upon separation.

ORDER: The appeal is dismissed.