U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23033813

Date: NOV. 18, 2022

Appeal of Long Island, New York 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 the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary 212(i) waiver if refusal of admission would result in extreme hardship to a qualifying relative or relatives.

The Director of the Long Island, New York Field Office denied the waiver 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. 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 only qualifying relative, his lawful permanent resident (LPR) spouse.

On appeal, the Applicant challenges the Director's finding of inadmissibility, submits new evidence, and asserts that his wife will experience extreme hardship in the event he is not granted a 212(i) waiver.

The Applicant bears the burden of proof in these proceedings 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). 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

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. Materiality Within the Meaning of Section 212(a)(6)(C)(i) of the Act

We review all questions presented in this appeal, including the question of whether the Applicant's misrepresentation was material, *de novo*. *See United States v. Stelmokas*, 100 F.3d 302, 317 (3d Cir. 1996). In *Matter of D-R-*, 27 I&N Dec. 105 (BIA 2017), the Board reviewed the question of what constitutes materiality in the context of an inadmissibility finding, and it determined that we must apply the "natural tendency" definition of materiality from *Kungys v. United States*, 485 U.S. 759 (1988), but not the "fair inference" test, in the inadmissibility context. *Matter of D-R-* at 108-09. The Board also found misrepresentation is material when it shuts off a line of inquiry relevant to admissibility, which probably would have disclosed other facts relevant to eligibility for a visa. *Id.* at 113.

B. Extreme Hardship under 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).

Only after the requisite extreme hardship to a qualifying relative(s) is established, must USCIS evaluate whether the foreign national merits the exercise of favorably discretion to grant the waiver. Section 212(i) of the Act.

II. ANALYSIS

The Director determined that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act because he misrepresented his marital status, and omitted his four children from multiple immigration forms. The Director also found the Applicant's use of an inauthentic birth certificate to fall within the meaning of section 212(a)(6)(C)(i). In addition to these misrepresentations, the Applicant married a U.S. citizen who filed three Form I-130 petitions on his behalf, in an attempt to gain LPR status through this marriage. At the time he married this U.S. citizen, he was not free to marry her because he was still married to his current wife, his qualifying relative. On appeal, the Applicant argues that his various misrepresentations do not meet the definition of section 212(a)(6)(C)(i) of the Act. Next, he argues that if his misrepresentations render him inadmissible, he has established that his LPR spouse will experience extreme hardship if his inadmissibility is not waived.

A. Fraud or Willful Misrepresentation of a Material Fact

The Applicant, a native and citizen of India, was found inadmissible under section 212(a)(6)(C)(i) of the Act. On appeal, the Applicant contests this determination and argues that his misrepresentations

were not material or willful within the meaning of section 212(a)(6)(C)(i) of the Act. He argues that his misrepresentations were not willful because he relied on the advice of legal counsel to submit an inauthentic birth certificate. Furthermore, he argues that when he omitted his wife and four children on various forms, he was attempting to keep his information consistent with prior forms, and he was confused about what information was necessary to provide in the context of the U.S. immigration system. Finally, he argues that when he married his U.S. citizen wife, while still married to his first (and current) wife, he did not know that he had entered into a legal marriage with his first wife, and that therefore, he was not free to marry.

Given the severe consequences of finding an individual inadmissible, we are expected to "closely scrutinize" the factual basis for a possible finding of fraud or material misrepresentation. *Matter of Y-G-*, 20 I&N Dec. 794, 797 (BIA 1994). As such, we begin with a review of the relevant facts. On or about January 1992, the Applicant arrived in the United States through unknown means, and filed an asylum application. The basis for his asylum claim was his assertion that he was subject to persecution by Indian government authorities on account of his Sikh ethnicity and associated political activities. On his asylum application, he provided his marital status as "single" and did not list any children. However, the facts show that in January 1992, he was married and had four children living in India. Therefore, his omission of his wife and children was a misrepresentation.

In [redacted] 1997, the Applicant married a U.S. born citizen who subsequently filed three Forms I-130, Petitions for Alien Relative, on his behalf. The first Form I-130 was terminated in March 2001. The second Form I-130 was denied because the Applicant failed to attend his scheduled interview. The third Form I-130 was denied because the Applicant and his U.S.-born wife were unable to establish that they were in a *bona fide* marriage. The Director's decision pointed out numerous inconsistencies in their testimony to support the decision. In all three petitions, the Applicant omitted any mention of his wife in India, or their four children. In addition, on the basis of his marriage to this U.S. citizen, the Applicant filed two Form I-485 applications for LPR status. He also omitted any mention of his wife and four children in India on these Form I-485s. Therefore, his omission of his Indian wife and children multiple times was a misrepresentation.

When asked about prior marriages on the Forms G-325A that accompanied these applications, the Applicant wrote "None." On top of the repeated omission of his Indian wife and children on all immigration forms he filed between 1997 and 2007, a fraud investigation determined that he was still married to his wife in India at the time he married his U.S. citizen wife. In addition, the investigation determined he knowingly submitted an inauthentic birth certificate.

In her decision, the Director mentions the submission of a divorce decree dated [redacted] 2010, purporting to end the marriage of the Applicant and [redacted] (his Indian wife). The document appears to have been issued by a court in [redacted] India. The document decrees the marriage between the Applicant and [redacted] dissolved and states that the Applicant made an "illegal demand" for cash, and when his wife did not comply, the Applicant gave her "severe beatings." We note discrepancies in the document including the fact that it states the Applicant and [redacted] had two children (not four) in the marriage. The document also states that the parties remained together as husband and wife until [redacted] 2004. However, by January 1992 the Applicant appears to have been living in the United States. This document also contradicts evidence submitted in support

of the Applicant's I-601 waiver. For example, his Indian wife underwent a psychosocial evaluation and during the preparation of that evaluation, she told the mental health counselor that the Applicant had always sent money to her and her children, and that he "never failed" in providing for them. This contradicts the divorce document which accuses the Applicant of demanding money and beating her when she did not provide what he demanded. Given these significant, unresolved discrepancies we decline to assign this document any meaningful evidentiary value.

Finally, the Applicant's marital history is a misrepresentation because at the time he married his U.S. citizen spouse in [redacted] 1997, he was still married to his Indian wife. Moreover, on appeal, the Applicant appears to admit his marriage to the U.S. citizen was entered into solely for the purpose of obtaining immigration benefits. He wrote "[a]fter I came to the U.S.A. i [sic] got married to [redacted] and this is my 2nd mistake made for immigration status. This was done for the welfare and benefit of my family for a secure future because I thought at the time this was [sic] secure a future for them in the United States of America. I am extremely sorry for it. I shouldn't marry her."[1] The Applicant does not contest any of these misrepresentations, however he argues that they were not willful or material.

Within the context of a section 212(a)(6)(C)(i) inadmissibility analysis for willful misrepresentation or fraud, the term "willfully" should be interpreted as "knowingly" as distinguished from accidentally, inadvertently, or in a good faith belief that the factual claims are true. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22 (BIA 1979). To find the element of willfulness, USCIS must determine that the person had knowledge of the falsity of the misrepresentation, and therefore knowingly, intentionally, and deliberately presented false material facts. *See Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956), *superseded in part by Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975). *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998) (Rosenberg, J., concurring and dissenting). If the false representation is made by an applicant's attorney or agent, the applicant will be held responsible 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* D.4, 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. *See id.* at n. 27. As such, actions taken by an adult who does not lack mental capacity are considered willful within the meaning of a section 212(a)(6)(C)(i) of the Act inadmissibility determination.

USCIS petitions and applications are signed "under penalty of perjury." Thus, by signing or by making statements under oath, the person asserts his or her claims are truthful. If the evidence in the record subsequently shows that the claims are factually unsupported, that may indicate the applicant willfully misrepresented his or her claim(s). At the time of the Applicant's entry to the United States in 1992, he was an adult, over 30 years old. He later became a business owner and appears to have had a long work history as a taxi driver. Therefore, there is insufficient evidence to suggest the Applicant lacks the ability to make decisions or exercise independent judgment.

[1] This admission may carry consequences for application of the bar contained at section 204(c) of the Act due to marriage fraud.

On appeal, he argues that he relied on the ill advice of an attorney and friend who told him to omit his personal family information and who gave him an inauthentic birth certificate to submit to USCIS. He admits that he now regrets these actions. However, the Applicant wants USCIS to absolve him of any responsibility for his actions because he relied on this bad advice. However, he has not presented any evidence to suggest that he could not have exercised independent judgment in his USCIS filings. It appears, particularly as it relates to his admission that marrying a U.S. citizen for immigration benefits was a "mistake," that he was acting in his own self-interest to achieve his goal of obtaining status to bring his Indian family to the United States. Moreover, he argues that once he made the initial mistake of omitting his marital and family history, he determined it was better to keep his information consistent and that he did not know what information was relevant to include on the various USCIS forms he submitted. Again, the Applicant makes these assertions with no evidence or justification. He does not address, for instance, why he did not follow the plain language and instructions accompanying all USCIS forms that request biographic information such as marital status or children. Instead, the Applicant appears to make unsupported claims that he did not know his Indian marriage was legally valid because he did not believe it was registered in India. Again, because he now admits that his "mistakes" were made to advance his own self-interests and those of his Indian family, his assertions, without evidence, are not credible. Furthermore, the Applicant later admits that his Indian marriage was registered, and he later obtained a divorce from his first wife. He does not clearly explain how he did not know his Indian marriage was registered and legally valid. He claims he relied on a friend who counseled him not to include this information, however this is not an adequate or valid reason to explain why he omitted his Indian family on multiple forms scanning 20 years of filings in our U.S. immigration system. (He first omitted his Indian family on his asylum application in 1992, and last omitted them on his 2007 adjustment application.) As such, we conclude that the Applicant's misrepresentations were willful because he acted knowingly, and there is no evidence to suggest he lacked mental capacity to understand that his misstatements, and use of inauthentic documentation was not willful. Furthermore, he now admits he made these "mistakes" to advance his and his Indian family's self-interest, so his misrepresentations were willful and carried out with knowing intent.

On appeal, the Applicant argues that his misrepresentations were not material. First, he argues that the inauthentic birth certificate contained valid information, therefore it did not mislead USCIS officers. In support of this proposition, he cites to *Maslenjak v. US*, 137 S.Ct. 1918 (2017), a case that determined which set of facts can lead the government to convict under a federal criminal statute prohibiting an individual from knowingly procuring, contrary to law, her naturalization. In *Maslenjak*, the Supreme Court determined that the government had not established that the defendant's answers to two questions on USCIS's naturalization form contributed to her obtaining citizenship. According to the Supreme Court, the causal link between the lie (or omission) must be sufficiently relevant to a naturalization criterion such that the government can undertake further investigation, and upon taking further investigation, the government should be able to find "disqualifying fruit." The Supreme Court also determined that it is a complete defense to prosecution under the statute (or denaturalization by the government) if a defendant demonstrates they are eligible for naturalization. We do not the facts and circumstances in *Maslenjak* to be sufficiently similar to those of the Applicant's circumstances to be relevant to our materiality analysis here. *Maslenjak* concerned a criminal prosecution, whereas

here, the test for materiality that we use is the "natural tendency" test found in *Kungys v. United States*, 485 U.S. 759 (1988).

The Applicant argues that his use of an inauthentic birth certificate was not material because the information was accurate. However, identity documents are fundamental to USCIS's ability to verify information related to an individual and their eligibility. Even if the information contained in the inauthentic certificate was accurate, USCIS seeks to rely on the documentation provided by applicants to carry out our mission of granting immigration benefits to individuals that are eligible. If others, like the Applicant, knowingly provide us with inauthentic information and documentation, the integrity of our immigration system is undermined. As such, we find the use of an inauthentic birth certificate to be material to the issue of identity, which is central to all immigration proceedings. As such, his use of this document supports finding him inadmissibility under section 212(a)(6)(C)(i) of the Act.

Second, the Applicant argues that the omission of his wife and four children on various immigration forms was not material because he did not know his Indian marriage was registered and thus legally valid in the United States. He claims he relied on a friend who misled him. This argument is illogical because the Applicant does not explain how his misunderstanding (or ignorance) of his marital status or whether his Indian marriage was registered would lead to him completely omit his marriage and children on various forms, spanning so many years. We also find these arguments lack credibility because he admits to making various immigration-related "mistakes" to promote his and his Indian family's self-interest.

Furthermore, there is no question that the Applicant's lack of candor about his marital status and children are misrepresentations that shut off a line of questioning relating to the *bona fide* nature of his marriage to his U.S. citizen wife. Moreover, his misrepresentations would have had the "natural tendency" to convince a USCIS officer that his marriage to the U.S. citizen was real, entitling him to immigration status on that basis. Finally, because the Applicant was not divorced at the time he entered into his marriage with a U.S. citizen, the materiality of his misrepresentations is central to his eligibility for a marriage based LPR status.

As such, we affirm the Director's determination that the Applicant's multiple misrepresentations and use of an inauthentic birth certificate in prior immigration proceedings were material within the meaning of section 212(a)(6)(C)(i) of the Act, and that he must seek a waiver of inadmissibility under section 212(i) of the Act to obtain LPR status in the United States.

B. Extreme Hardship to Qualifying Relative

The next issue is whether the Applicant has established extreme hardship to his qualifying relative spouse. 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 the applicant's evidence demonstrates 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 B.4, https://www.uscis.gov/policymanual. In her statement accompanying the Applicant's I-601 waiver application, the Applicant's qualifying relative wife states "[r]elocating to India to keep my family intact if [the Applicant] is not granted a waiver is not an option." The Applicant must therefore establish that if he is denied admission, his qualifying relative spouse would experience extreme hardship upon separation.

Having considered all the evidence in the record, including the documentation submitted on appeal, we conclude that the claimed hardships to the Applicant's spouse do not rise to the level of extreme hardship either individually or cumulatively. Our decision is based on a review of the record, which includes, but is not limited to, a legal brief, statements from the Applicant, his spouse, and two of their children, financial and employment documentation, reports regarding country conditions in the Applicant's home country, biographic and civil documents, as well as evidence of the Applicant's community ties to the U.S., and work history and payment of taxes.

The Applicant's spouse states that she will experience extreme emotional, medical, and financial hardship if the Applicant is unable to reside in the United States with her. She married the Applicant twice; first in 1978 in India, and again in 2011 in the United States. The couple have four children together: two reside in the United States, one resides in Germany, and another child resides in Canada. The record contains statements from the two children living in the United States. Her daughter, who lives in California, discusses her father's misrepresentations, and attempts to put them in the context of a loving father who attempted repeatedly to gain immigration status in the United States in order to help his family. She writes about the struggles her mother went through while raising her and her three siblings in India after the Applicant came to the United States. She requests leniency for her father given that his misrepresentations were done on behalf of the family and that they all suffered while he was away. The Applicant's son explains that him and his family reside with his parents in New York, and that the Applicant (his father) helps his mother with everything. He also explains that while he is currently helping his parents manage their liquor store, he plans to transition to real estate, and he cannot step into the role his father assumes to care for his mother who is aging and not in good health.

On appeal, the Applicant's spouse provides an updated statement describing the health challenges she and the Applicant are experiencing, and her reliance on the Applicant. The Applicant and his wife are both in their late 60s and have multiple health issues. The Applicant's wife immigrated to the United States in 2011, speaks English as a second language, and has been diagnosed with back pain, glaucoma, diabetes, hypertension, and mental health challenges such adjustment disorder and associated depression and anxiety. She has had glaucoma-related eye surgeries and continues to suffer from glaucoma-related vision loss in one of her eyes. She describes how it is her husband that monitors her blood sugar, which is essential to her diabetes care, because she has an extreme fear of medical procedures involving injections or needles. She describes experiencing dizziness at the thought of pricking herself. She explains that she relies on her husband to drive her to her doctor's appointments, and that she works only part-time because her health does not allow her to work more hours. She claims that her husband is also sick with coronary heart disease and that he has had heart attacks and underwent surgery to have a stent placed in his arteries to prevent future heart attacks. She explains that her and her husband run a liquor store together and that they rely on each other. Her son and husband describe that because English is not her primary language, she relies on her husband to handle business matters with distributors and suppliers. She further explains that losing her husband again

would cause her extreme emotional hardship because she lost his companionship before, and to do so again, would be extremely difficult.

While we are sympathetic to the Applicant's spouse's emotional distress regarding her husband's removal to India, the evidence falls short of demonstrating extreme emotional hardship upon separation. We do not take lightly that a family member's removal would cause disruptions to a family's routines; however, the Applicant's spouse explains that it is her husband's potential removal that has caused her stress. In other words, while we are sympathetic to the stress that this situation would cause, it does not appear to be such a permanent or debilitating stress such that the Applicant's spouse could not carry out her normal daily activities. *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).

With respect to her medical challenges, and the Applicant's role in caring for her and driving her to appointments, she has not explained why her son could not fulfill that role. She describes having a fear of needles, however, treatment and monitoring for diabetes and blood sugar levels does not have to involve needles. She does not provide any information to understand whether she has considered alternative, non-needle related forms of monitoring blood sugar. Furthermore, her doctor describes that her diabetes is uncontrolled, so the evidence is insufficient to understand how the Applicant's presence in the United States is helping her with her medical care when it appears that she is not improving or stable. Again, while we are sympathetic to the Applicant's spouse's age and health challenges, it appears that she is able to work, and has other family to support her and drive her to medical appointments if the Applicant is not in the United States to do so. In addition, various statements describe that the Applicant is also in ill health, therefore, the evidence is insufficient to understand how someone with ailing health is in a position to support her in her health challenges. In sum, the evidence is insufficient to establish she would suffer extreme medical hardship if the Applicant is removed to India.

Regarding financial hardship, various statements describe how the Applicant's wife would not be able carry out the business affairs related to the family's liquor store because of her health issues and because English is not her first language. We note, however that her son is an adult, living in her home, who also works alongside her and his father in the business of running the liquor store. We acknowledge that her son has stated that he has future plans to transition to the real estate business, however no evidence has been presented to show that the family has considered alternative arrangements, such as hiring an additional manager to cope if the Applicant is no longer in the United States. We acknowledge that it appears the Applicant's work history and efforts to create financial stability for his wife and family have been successful. However, while we are sympathetic to his efforts, and how the family has benefitted from them, the family owns their own business and has other assets such as a home, which diminish any financial hardship the Applicant's spouse would face if the Applicant is removed. Again, we acknowledge that separation from the Applicant may cause his wife financial disruption, however the evidence does not establish that the financial hardship would be extreme.

The Applicant has provided copious amounts of country conditions reports and information related to the inadequacies of the healthcare system in India, as well as information related to India's handling

of COVID-19. The Applicant also provides a letter from an infectious disease doctor that discusses how individuals who spend more than one year outside India have waning immunity for malaria, and become vulnerable again to this disease. This evidence, however, is not relevant to the Applicant's spouse's hardship because she has already stated that she is not going to relocate to India. Therefore, although this evidence might be relevant to the Applicant's hardship upon removal to India, our analysis centers on the hardships the Applicant's wife will face upon separation from him. As such, country conditions reports or the status of India's healthcare system are not relevant to the Applicant's wife's hardships upon separation.

We also note that government records indicate that the Applicant's spouse has traveled to Canada many times since becoming an LPR. No evidence has been provided to establish why she could not also travel to India to visit the Applicant if he is removed. The Applicant has not shown any risk of individualized harm to his wife if she were to visit him in India. Thus, the evidence is insufficient to establish that the emotional distress the Applicant's spouse would experience upon separation could not be alleviated by her traveling to India to visit him or that she would suffer any harm if she did travel there.

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.

III. CONCLUSION

For the foregoing reasons, upon consideration of 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.