U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23291362

Date: NOV. 22, 2022

Appeal of Minneapolis, Minnesota 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 fraud or misrepresentation of material facts. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. If the noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. Section 212(i) of the Act.

The Director of the Minneapolis, Minnesota Field Office denied the application, concluding that the record did not establish that the Applicant's qualifying relatives would experience extreme hardship upon her departure from the United States. The matter is now before us on the Applicant's appeal. On appeal, the Applicant contends that the Director erred by concluding that she is inadmissible and by not considering the evidence of hardship in its entirety.

The Administrative Appeals Office (AAO) reviews 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 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.

This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or LPR spouse or parent. Sections 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).

II. ANALYSIS

The issues on appeal are whether the Applicant is inadmissible for fraud or misrepresentation, and if so, whether she has demonstrated that her qualifying relatives would experience extreme hardship if the waiver were denied. We have considered all the evidence in the record and conclude that the Applicant is inadmissible for fraud or misrepresentation. We further find that the Applicant has not established that the claimed hardships rise to the level of extreme hardship when considered both individually and cumulatively.

A. Inadmissibility

The record reflects that in June 2014, the Applicant submitted a Form DS-160, Nonimmigrant Visa Application (Form DS-160), seeking an F-1 student visa. In her Form DS-160, she indicated that her father, then a U.S. lawful permanent resident, was not in the United States.[1] However, USCIS records reflected that the Applicant's father entered the United States in 2012 and did not depart.

In August 2021, the Applicant indicated during an interview for her Form 1-485, Application to Register Permanent Residence or Adjust Status, that she was aware that her father was in the United States at the time she filed her nonimmigrant visa application in 2014. The Director determined that the Applicant's failure to disclose that her father was in the United States rendered her inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation of a material fact.

On appeal, the Applicant asserts that she is not inadmissible under section 212(a)(6)(C)(i) of the Act because her failure to disclose her father's location on the nonimmigrant visa application was a mistake and not a willful misrepresentation. USCIS records reflect that, during her Form I-485 interview, the Applicant stated, "if that is what is on there it was a mistake because he was in the United States and I listed him as my sponsor." However, a review of the Form DS-160 reveals that the Applicant did not list her father as a sponsor. Rather, the Applicant listed her mother as the person paying for her trip, and the university as her U.S. contact.

The Applicant asserts that, prior to submitting her nonimmigrant visa application, she provided her father's U.S. address on her application to the University [redacted], the school identified on her Form DS-160, and that she indicated that her father would provide financial support during her studies. She provides a copy of the online application listing her address in the United States as her father's address and a financial certification statement from the University [redacted] listing her father's income as a financial resource. However, the Applicant does not establish, or even assert, that these documents were made available to the interviewing officer at the time of her nonimmigrant visa interview.

[1] USCIS records reflect that the Applicant's father became a naturalized U.S. citizen on March 21, 2022.

A misrepresentation is material under section 212(a)(6)(C)(i) of the Act when it tends to shut off a line of inquiry that is relevant to the noncitizen's admissibility and that would predictably have disclosed other facts relevant to his or her eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-*, 27 I&N Dec. 105 (BIA 2017). An applicant applying for an F-1 student visa must establish that they are a *bona fide* student qualified to pursue a full course of study, have a residence in a foreign country which they have no intention of abandoning, and seek to enter the United States temporarily and solely for the purpose of pursuing a course of study. Section 101(a)(15)(f) of the Act.

Here, the disclosure that the Applicant's father was in the United States was material and would have led to further inquiry about the Applicant's additional ties to her home country to determine whether she had an intention of abandoning her residence there. Because the concealment of her father's location shut off a line of inquiry which was relevant to her visa eligibility, her misrepresentation was material, rendering her inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States by willful misrepresentation of a material fact.

B. Extreme Hardship

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives. 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 establishes 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. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (discussing, as guidance, extreme hardship upon separation and relocation).

On the Form I-601, Application to Waive Inadmissibility Grounds, the Applicant lists her qualifying relative as her father, now a U.S. citizen. USCIS records reflect that the Applicant's mother became a U.S. lawful permanent resident as of July 20, 2021. In the present case, the Applicant's parents do not indicate whether they intend to remain in the United States or relocate to Kenya if the Applicant's waiver application is denied. The Applicant must therefore establish that if she is denied admission, her qualifying relatives would experience extreme hardship both upon separation and relocation.

The record reflects that the Applicant is a 28 year-old student who resides with her parents and younger sister (a lawful permanent resident) in the United States. The Applicant's father states that she assists him with household expenses and takes her mother to medical appointments. He describes how the Applicant encouraged him to further his education and, with her support, he enrolled in a nursing program. The Applicant's mother states that her daughter drives her to and from work and medical appointments, helps her with medical care for her high blood pressure, takes her father to medical appointments, and contributes to the family financially. The Applicant's sister describes the emotional, psychological and financial support the Applicant gives to the family.

The record includes the Applicant's father's tax returns and her mother's medical records documenting hypertension. The record also includes a letter from the Applicant's therapist attesting to her symptoms of depression, the Applicant's student financial account and bank statements, and country reports on Kenya from Amnesty International and the U.S. Department of State.

The Director concluded that the Applicant's family's claims of extreme emotional and financial hardship were not supported by documentary evidence in the record. On appeal, the Applicant asserts that the Director did not review the documentary evidence in the record and addressed only the claimed hardships of her father as a qualifying relative but did not address the claimed hardships to her mother. She submits new statements from her parents and sister attesting to the hardships the family will suffer if she is required to relocate to Kenya.

The Applicant's sister describes a December 2021 car accident that she was in and the support the Applicant provided in coming immediately to the accident scene, as well as the regular emotional, psychological and financial support she provides the family every day.[2] The Applicant's father describes the emotional support she provides him now that the entire family is reunited and states that being separated from her will cause the family pain and sadness. The Applicant's mother describes the physical and psychological stress she suffered in being separated from her family for seven years and the support the Applicant provides in helping her adjust to life in a new country, allowing her to improve her health. With the appeal the Applicant provides her father's medical records documenting his hypertension and a 2021 dental surgery; she resubmits her mother's medical records, as well as a statement from her mother's doctor stating that the Applicant provides transportation for her mother's appointments; and she provides a motor vehicle crash report documenting her sister's December 2021 car accident.

Despite the Director's statement in the decision that the Applicant "did not submit any documentary evidence to support [the] application," which the Applicant highlights on appeal, we conclude that the Director identified and analyzed each piece of evidence in the record. The Director specifically addresses the personal statements from the Applicant and each of her family members, the medical and financial records, and the statement from the Applicant's therapist. The Director also separately discusses and analyzes the claimed hardships to both the Applicant's father and her mother.

Upon *de novo* review, the Applicant has not established by a preponderance of the evidence that her parents would suffer extreme hardship upon separation or relocation. We acknowledge the Applicant's parents' statements regarding the difficulties that separation from her family would cause them as well as the medical records documenting hypertension. However, the record as constituted does not rise to the level of extreme hardship. Further, the record does not describe or document how the Applicant's treatment for symptoms of depression impacts either of her parents. While we acknowledge that the submitted documentation establishes that the Applicant's parents would experience some emotional hardship, the documentation does not establish the severity of the emotional hardship or any resulting limitations from her departure. Nor does the record document that the Applicant's parents would be unable to find alternative transportation to attend medical appointments or that their health would otherwise decline if they were separated from the Applicant.

[2] Although siblings are not considered qualifying relatives under section 212(i) of the Act, we may consider their claimed hardship to the extent it causes hardship to a qualifying relative.

With respect to financial hardship, the record does not include evidence of the Applicant's income or her financial contributions to the family. The record reflects that both of the Applicant's parents are employed and that the Applicant's father contributes to the cost of her tuition. The bank statements do not identify the Applicant's regular income or specific household expenses for which she is responsible. Without specific details about the Applicant's contribution to the household expenses, we are unable to determine what hardship the family might experience, if any, without the Applicant's contribution if she were to return to Kenya. We acknowledge that the family's finances may be negatively impacted by the Applicant's relocation to Kenya. However, the record does not indicate that the Applicant would be unable to provide for herself if she were denied admission to the United States, or that she would need to rely on contributions from her parents or detract from the family's income in the United States.

Based on the record, we agree with the Director that the evidence submitted does not provide the detail and specificity necessary to make a finding that the claimed hardships amount to extreme hardship when considered either individually or cumulatively. Thus, the Applicant has not established that her parents' hardships would go beyond the common results of removal and rise to the level of extreme hardship.

Considering all of the evidence relating to the emotional, psychological and financial situation of the Applicant's parents in its totality, the record does not show that the financial, medical and emotional hardships they would experience, even when aggregated, would be so exceptional or atypical that they would rise to the level of extreme hardship. Because the Applicant has not demonstrated that separation from her parents if she returned to Kenya would cause extreme hardship, we do not need to consider the difficulties they would face if they accompanied her to Kenya.

The Applicant must establish by a preponderance of the evidence that denial of the waiver application would result in extreme hardship to a qualifying relative both upon separation and relocation. Section 212(a)(9)(B)(v) of the Act; *Chawathe*, 25 I&N Dec. at 375; *see also* 9 *USCIS Policy Manual* B.4(B), (providing, as guidance, the scenarios to consider in making extreme hardship determinations). As the Applicant has not established extreme hardship to her parents in the event of separation, we cannot conclude she has met this requirement.

ORDER: The appeal is dismissed.