U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22739960

Date: OCT. 12, 2022

Appeal of Honolulu 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 committing a fraudulent act or misrepresenting a material fact. U.S. Citizenship and Immigration Services 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 Honolulu 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, their only qualifying relative.

The matter is now before us on appeal. 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 conclude that a remand is warranted in this case.

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.*

II. ANALYSIS

The Applicant failed to divulge a previous marriage on a Form I-130, Petition for Alien Relative that his current spouse filed on his behalf in 2014. As of that filing, the Applicant had not attained a divorce from his previous spouse. That petition was eventually approved, and that approval was subsequently

revoked because the Applicant was not free to marry the spouse who filed the Form I-130. This resulted in the Applicant being considered inadmissible under section 212(a)(6)(C)(i) for fraud or misrepresenting a material fact. To address this inadmissibility ground, the Applicant filed the waiver application, which the Director denied concluding he had not shown his spouse would experience extreme hardship if he were denied admission as an LPR.

As the Applicant notes on appeal, the Director offered little analysis of his claims and evidence within the waiver application denial. The Director recounted the facts of the case and listed the documentation the Applicant provided, briefly discussed the qualifying relative's statement, acknowledged the evidence relating to the qualifying relative's children, and mentioned country conditions relating to the Applicant's home country.

After reviewing the denial decision, we conclude its lack of discussion of evidence and claims the filing party advanced before the Director raises too great a concern that they did not adequately consider the record before them, which warrants a remand. *See Ndifon v. Garland*, No. 20-60997, 2022 WL 4939376 at *3 (5th Cir. Oct. 4, 2022) (concluding a lack of adequate review results in a filing party not receiving "meaningful consideration of the relevant substantial evidence supporting" their claims). What is required is that the previous trier of fact consider the issues raised and announce its decision in terms sufficient to enable an appellate body to perceive that it has heard and thought and not merely reacted. *Rodriguez-Jimenez v. Garland*, 20 F.4th 434, 439 (9th Cir. 2021).

Consequently, the record does not reflect the Applicant was provided a meaningful opportunity on appeal to address or rebut the Director's assessment of the evidence and basis for denial. *See* 8 C.F.R. § 103.3(a)(1)(i) (requiring in writing, specific reasons for denial of an application or petition); *see also Matter of Saelee*, 22 I&N Dec. 1258, 1262, 1286 (BIA 2000) (citing *Matter of M-P-*, 20 I&N Dec. 786, 787–88 (BIA 1994) (finding that a decision must fully explain the reasons for denying a filing to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Based on this shortcoming, we will remand the matter to the Honolulu Field Office Director to consider the material and claims in the record and to provide a more adequate analysis of the Applicant's eligibility for a waiver.

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