U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22755803

Date: OCT. 26, 2022

Appeal of Jacksonville, Florida 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 section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The Director of the Jacksonville, Florida Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), noting the Applicant's inadmissibility and concluding that although the Applicant established the requisite extreme hardship to a qualifying relative, a favorable exercise of discretion was not warranted.

On appeal, the Applicant submits additional evidence and asserts that she is not inadmissible for fraud or misrepresentation and that she merits a favorable exercise of discretion.

The Applicant bears the burden of proof 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). This office reviews 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, as explained below, we will withdraw the Director's decision and remand the matter for entry of a new decision.

I. LAW

Any 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 waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. If the noncitizen demonstrates the existence of the required hardship, then they must also show that United States Citizenship and Immigration Service (USCIS) should favorably exercise its discretion and grant the waiver. 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). In these proceedings, it is the applicant's burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe,* 25 I&N Dec. 369, 375 (AAO 2010).

If the noncitizen demonstrates the existence of the required hardship, then he or she must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(a)(9)(B)(v) of the Act. The burden is on the noncitizen to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N 296, 299 (BIA 1996). We must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the noncitizen and his or her family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

II. ANALYSIS

The issues on appeal are whether the Applicant has established eligibility for a waiver of inadmissibility pursuant to sections 212(h)(1)(A) or 212(h)(1)(B) of the Act and if so, whether a favorable exercise of discretion is warranted.

A. Inadmissibility

On appeal, the Applicant contests the finding of inadmissibility. The Applicant has been found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. The record establishes that the Applicant is Venezuelan but mispresented her nationality as Cuban in order to adjust status under the Cuban Adjustment Act. She submitted a counterfeit Cuban birth certificate with her adjustment of status (Form I-485) application.

On appeal, the Applicant asserts that she was the victim of immigration fraud perpetrated by an individual purporting to be an immigration officer, and who offered to assist her obtain lawful permanent resident (LPR) status. This individual filed a Form I-485 on her behalf, and the Applicant claims she was not able to review the application prior to signing. The Applicant states in her affidavit

that she believed he was an immigration officer because he had an ICE uniform in his car, and she was influenced by his air of authority, his uniform, and his demeanor. She also states that once she received a request for evidence for her adjustment application indicating she had applied under the Cuban Adjustment Act, she was "mortified" and immediately withdrew her adjustment application. On appeal, the Applicant submits articles regarding the arrest of the individual who she claims filed her adjustment application for immigration fraud. The Applicant also asserts that it was not her intention to deceive USCIS or commit fraud because she was relying on the individual that filed her application who she believed was an immigration officer.

To be found inadmissible for fraud or willful misrepresentation there must be at least some evidence that would permit a reasonable person to find that the noncitizen used fraud, or that she willfully misrepresented a material fact in an attempt to gain an immigration benefit. The burden of proof is always on the Applicant. A noncitizen cannot deny responsibility for any misrepresentation made on the advice of another unless it is established that the noncitizen lacked the capacity to exercise judgment.[1] Here, the Applicant has not demonstrated that she did not have the capacity to exercise judgment as part of her first adjustment application. Therefore, we find the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

To ensure its accuracy, the Applicant had the duty and the responsibility to review the application prior to submission, irrespective of who she had retained to process and file the application on her behalf. In this case, there is no evidence to show that the Applicant did not have the capacity to exercise her own judgment and answer the questions truthfully and candidly. The questions at issue are written in clear and succinct language.

The Act makes clear that a noncitizen must establish admissibility "clearly and beyond doubt." Sections 235(b)(2)(A), 240(c)(2)(A) of the Act. The Applicant signed her Form I-485 under a certification stating that the application and the evidence submitted with it was all true and correct. As such, the Applicant's signature indicated her awareness of and certification to the truthfulness of the facts contained within her application. The record thus establishes that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or misrepresentation on her adjustment of status application.

B. Discretion

The issue on appeal is therefore whether the Applicant has established that she merits a favorable exercise of discretion. On appeal, the Applicant contends that the Director did not properly weigh the positive factors against the negative factors. The burden is on the noncitizen to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N 296, 299 (BIA 1996).

In the decision denying the Applicant's waiver application, the Director listed the negative factors to include the Applicant's inadmissibility due to a willful misrepresentation, her B-1 visa overstay, and her employment in the United States without authorization.

[1] 8 *USCIS Policy Manual* J(A)(1),(A)(2),(D)(4), https://www.uscis.gov/policymanual.

However, the Director's decision did not address additional evidence in support of discretion. For example, the Director's analysis does not consider all of the claimed hardships to the Applicant. The Applicant stated that she entered the United States in 2000 when she was 31 years old and has resided here for over 22 years. She has been married to her LPR husband for over 36 years and has a U.S. citizen son and two U.S. citizen grandchildren. She contends that if she is removed, she and her family will suffer emotional hardship without her daily love and support. In addition, she explained how her husband of 36 years will suffer greatly since she provides him with emotional support and medical support since she assists him with all medical needs. As noted, the Director does not appear to have weighed any of these factors.

Furthermore, the Director's analysis does not appear to consider the Applicant's community ties in the United States, from 2000, when she entered the United States. The Applicant submits several letters of support from members of her church, fiends, and family members attesting to the Applicant's moral character. The Director also did not consider the Applicant's ownership of a home and commercial property; her gainful employment; tax filings; the Applicant's apparent lack of a criminal history; the approved Form I-130 on the Applicant's behalf; her role as a financial contributor to her spouse; and, documentation evidencing the country conditions in Venezuela.

In sum, because the Director's decision does not appear to have weighed all the positive factors in the Applicant's case, we find it appropriate to remand the matter for the Director to reevaluate the submitted evidence and consider whether the Applicant has established that she merits a favorable exercise of discretion.

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