U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22746518

Date: OCT. 31, 2022

Appeal of Chicago, Illinois Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico, 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 Chicago, Illinois Field Office denied the application, concluding that the record did not establish that the Applicant's United States citizen spouse, the only qualifying relative, would experience extreme hardship if the waiver was not granted. On appeal, the Applicant contends that the Director erred in denying the application. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

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 discretionary 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. 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).

II. ANALYSIS

The issues on appeal are whether the Applicant is inadmissible for willful misrepresentation and whether he has demonstrated his United States citizen spouse would suffer extreme hardship upon denial of the waiver.

A. Inadmissibility

The Applicant contends he is not inadmissible because he did not willfully misrepresent a material fact. The Applicant was found inadmissible for willfully misrepresenting information about his period of stay in the United States after his entry in 2003 in order to obtain immigration benefits. The Applicant indicated in his Form I-485 ("adjustment application") that he entered the United States as a B-2 visitor in 2003, stayed beyond the expiration of his authorized period of stay, and next departed the United States for Mexico in 2012, where he remained for about one year. In January 2013 he applied for and obtained another B-2 visitor's visa in Mexico from the United States Department of State (DOS).[1]

In contrast, when filing a Form I-821D, Consideration of Deferred Action for Childhood Arrivals ("DACA application") in 2014, he claimed that he was continuously present in the United States from July 2003 through March 2014, except for a brief visit to Mexico from January 28, 2012 until April 6, 2012. He reiterated this information in a Form I-765 ("employment authorization application") filed concurrently with the DACA application in which he received employment authorization by indicating that his last entry into the Unites States took place on April 6, 2012. In order to qualify for immigration benefits in a DACA application, an applicant had to demonstrate that he was physically present in the United States on June 15, 2012, and continually resided in the United States until the filing of the DACA application, which in this case was March 17, 2014. Based on the Applicant's conflicting statements within his USCIS applications, the Director concluded that the Applicant willfully misrepresented information in his DACA-related applications in order to obtain immigration benefits. We agree.

The Applicant claims on appeal that any misrepresentations that he made were not willful because he was not aware of the contents of his immigration applications. For instance, on appeal he acknowledges his previous statements made during his adjustment interview asserting that "multiple people helped me fill out my applications. I understand it was my responsibility to review all of the information, but I was young and just signed where they told me to." Notably, the Applicant was twenty years old at the time of filing his DACA application. The record indicates that the Applicant signed not only the DACA application, but also the employment authorization application, both of which contained false information. Because USCIS applications are signed "under penalty of perjury," an applicant, by signing and submitting the application or materials submitted with the application, is attesting that their claims are truthful. 8 *USCIS Policy Manual* J.3(D)(1), https://www.usicis.gov/policymanual. The Applicant's signature on these applications "establishes a strong presumption" that he knew and assented to the contents. *Matter of Valdez*, 27 I&N Dec. 496,

[1] Notably, the Applicant claimed in his January 2013 B-2 nonimmigrant visa application (NIV) that he last entered the United States in 2003 and stayed for seven days, not for the many years alluded to in his applications submitted with USCIS. DOS officials relied upon the Applicant's statements in the NIV in order to determine his eligibility for a B-2 visa.

499 (BIA 2018). Such a presumption can be rebutted through evidence that an applicant was misled and deceived by their representative when preparing the application. *Id.* The Applicant has not submitted evidence sufficient to support his assertions that he was misled by the individuals who prepared his applications, and the record does not establish that he was unaware of the misrepresentations. Accordingly, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking an immigration benefit through fraud or misrepresentation and requires a waiver of inadmissibility.

B. Extreme Hardship

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case his U.S. citizen 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 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. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual. On appeal, the record contains a statement from the Applicant's spouse indicating that she is unsure about whether she will remain in the United States or relocate to Mexico if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his qualifying relative would experience extreme hardship both upon separation and relocation.

The Applicant contends that his spouse would experience medical and emotional health hardships as well as financial hardships upon relocation or separation. On appeal, the Petitioner points to the Director's failure to address this issue in the request for evidence (RFE). The regulation at 8 C.F.R. § 103.2(b)(8), however, permits the Director to deny a petition for failure to establish eligibility without having to request evidence regarding the ground or grounds of ineligibility identified by the Director. Further, even if the Director had erred as a procedural matter, it is not clear what remedy would be appropriate beyond the appeal process itself, which provided the Petitioner an opportunity to supplement the record and establish that his spouse would experience extreme hardship upon relocation or separation. Therefore, it would serve no useful purpose to remand the case simply to afford the Petitioner another opportunity to supplement the record with new evidence.

Regarding medical health hardships, the Applicant's spouse submits letters indicating that she suffers from sleep apnea. The Director observed in the denial that the record did not contain any evidence that the spouse had sought a diagnosis and treatment for this condition. On appeal, the spouse states that because of her changing work schedule "it has been difficult scheduling appointments and a diagnose cannot be promptly made." Here, the record lacks evidence to substantiate the severity of the spouse's claimed medical condition, the course of treatment required to address the condition, and the impact, if any, that separation will have on the spouse's continuing physical health.

Similarly, the information in the spouse's mental health assessment does not indicate that she would experience extreme emotional hardship as a result of separation. The health-care professional states that the spouse meets the criteria for persistent anxiety disorder, and that anxiety about losing the

Applicant upon separation would cause the spouse to experience "substantial emotional distress." The professional recommended that the spouse seek counseling to develop her coping skills, and that she should procure a medical depression and anxiety evaluation from a physician. On appeal, the spouse indicates that she has been "dealing with anxiety and emotional stress for many years." She adds that she "recently began counseling."

In a follow-up letter provided on appeal the health-care professional asserts that upon separation, the spouse "will progress into a major depressive disorder which means even hospitalization." However, the record does not substantiate that the spouse sought and received a diagnosis from a physician as suggested by the health-care professional, or that she is currently undergoing a plan of treatment for her condition, and the Applicant's role, if any, in her continuing mental health care. We recognize that the loss of Applicant's companionship would be detrimental to his spouse's overall emotional wellbeing; nevertheless, the assessment's conclusion that the spouse will suffer emotional and psychological distress if she is separated from the Applicant is insufficient to establish the degree of the resulting hardship. Without more, we are unable to determine that the mental health and emotional hardships she would experience upon separation from the Applicant, would exceed that common to inadmissibility and removal.

Concerning financial hardship, the Applicant asserts on appeal that in order to settle the couple's debts his spouse will "have to stay in the United States without me until all our loans are paid." The Applicant provided documents relating to the couple's mortgage payments and car loans, as well as other documents, such as bank statements. However, on appeal the Applicant has not provided an updated accounting of the couple's income and expenses, nor has he submitted documentation regarding the income currently earned by him or his spouse. The spouse indicates that she has been recently promoted to a new position at work, but she does not indicate what her current level of compensation is. Without a complete picture of the family's current financial situation, we cannot determine the severity of the financial impact of separation upon the Applicant's spouse.

The Applicant also refers to and submits unpublished decisions in which we made extreme hardship determinations in appeals unrelated to this case. The Petitioner has furnished no evidence to establish that the facts of the instant application are analogous to those in the unpublished decisions. While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Although we recognize that the Applicant's spouse may face some hardships upon separation, based on the record, we cannot conclude that when considered in the aggregate, the hardship would go beyond the common results of separation from a loved one and rise to the level of extreme hardship.

The Applicant must establish that denial of the waiver application would result in extreme hardship to a qualifying relative both upon separation and relocation. As the Applicant has not established extreme hardship to his spouse in the event of separation, we cannot conclude he has met this requirement.

ORDER: The appeal is dismissed.