U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29060971

Date: DEC. 12, 2023

Appeal of Nebraska Service Center Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of Cuba, has applied for an immigrant visa, which requires her to show, inter alia, that she is admissible to the United States or eligible for a waiver of inadmissibility. Section 245(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(a)(2). A U.S. Department of State ("DOS") consular officer found the Applicant inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), and she sought a discretionary waiver of inadmissibility under sections 212(i) of the Act in conjunction with her immigrant visa application based on a family-based visa petition.[1]

The Director of the Nebraska Service Center denied the Applicant's Form I-601, Application to Waive Inadmissibility Ground (waiver application), concluding that she is inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act, as determined by DOS, and that she did not establish the requisite extreme hardship to a qualifying relative to demonstrate eligibility for a section 212(i) waiver of this inadmissibility ground. The matter is now before us on appeal, which we review 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.

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. This inadmissibility may be waived if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act. If the noncitizen establishes the requisite hardship, they must also show that their waiver request warrants a favorable exercise of discretion. *Id.* The Applicant bears the burden to establish eligibility for the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

Whether a 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). While some degree of hardship to qualifying relatives is present in most cases, the hardship must exceed that which is usual or expected for it to be considered "extreme." *See, e.g.*, *Matter of Pilch*,

[1] Although the Applicant filed her section 212(i) waiver for purposes of her immigrant visa application while still residing abroad, government records indicate that she was subsequently paroled into the United States in November 2022.

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).[2]

The record shows that the Applicant filed an immigrant visa application based on approved visa petition her lawful permanent resident spouse filed for her in 2011. A DOS consular officer interviewed the Applicant, reviewed her limited documentary evidence, and determined that her claimed marriage was not bona fide. The consular officer denied the immigrant visa application, and subsequently determined that she was inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act. Following a notice of intent to revoke the previously approved spousal visa petition, U.S. Citizenship and Immigration Services in turn revoked approval of the Applicant's visa petition. She subsequently applied for another immigrant visa based on an approved visa petition her U.S. citizen daughter filed for the Applicant in 2016, and she also sought a section 212(i) waiver due to the DOS' inadmissibility determination. The Director denied the Applicant's waiver application because she remains inadmissible for fraud or willful misrepresentation, as determined by DOS, and she did not establish the requisite extreme hardship to a qualifying relative as required for a section 212(i) waiver of inadmissibility. This appeal followed.

The Applicant contested only the DOS' inadmissibility determination before the Director and did not assert extreme hardship to a qualifying relative for purposes of 212(i) waiver eligibility. On appeal, the Applicant submits a brief and reiterates again that DOS erred in determining that she is inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act and that we must therefore withdraw the DOS' inadmissibility determination.

We acknowledge the Applicant's appeal assertion that her failure to establish a bona fide marriage does not necessarily support the DOS' finding that she is also inadmissible for having committed fraud or made a willful misrepresentation during her immigration visa process. However, DOS makes a final determination concerning admissibility and eligibility for an immigrant visa. Here, the record contains evidence based on which the DOS reasonably found the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act. Therefore, we may consider only whether the Applicant qualifies for a waiver of her inadmissibility.

As stated, section 212(i) waiver of inadmissibility for fraud of willful misrepresentation may be waived if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act. As noted, the Applicant did not claim below that a qualifying relative or qualifying relatives would suffer extreme hardship as a result of her inadmissibility or submit evidence of hardship; and she does not make any such claim on appeal or submit any new evidence pertaining to the requisite extreme hardship. Accordingly, the record does not overcome the Director's determination that the Applicant is ineligible for a section 212(i) waiver of inadmissibility. Thus, she has not established her eligibility for the section 212(i) waiver.

[2] In the present case, the Applicant does not specify whether she currently has a qualifying relative and (if she does) the record does not contain clear statements from her spouse or parents indicating whether they intend to remain here or relocate to Cuba if the waiver request is denied. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (providing guidance on the scenarios to consider in making extreme hardship findings).

Applicants for admission bear the burden of establishing eligibility for a waiver of inadmissibility. *Matter of Chawathe*, 25 I&N Dec. at 375; *Romero v. Garland*, 7 F.4th 838, 840-41 (9th Cir. 2021) (holding that applicant seeking admission must establish "clearly and beyond doubt" that they are entitled to be admitted and is not inadmissible). The Applicant has not met her burden of proof as the record indicates she is inadmissible under section 212(a)(6)(C)(i) of the Act, and she has not established her eligibility for a waiver of such inadmissibility under section 212(i) of the Act.

ORDER: The appeal is dismissed.