U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24133012

Date: FEB. 16, 2023

Appeal of Chicago, Illinois Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of the Philippines, 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 (Director) denied the application, concluding that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or misrepresentation, and that she did not demonstrate that the application for a section 212(i) waiver of her inadmissibility warrants a favorable exercise of discretion.

The matter is now before us on appeal. On appeal, the Applicant submits additional evidence, contends that she did not intentionally misrepresent herself, and asserts that the Director did not apply sufficient weight to the evidence of favorable factors in consideration of the exercise of discretion. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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 will remand the matter to the Director for further proceedings.

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. This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident (LPR) spouse or parent of the noncitizen. Section 212(i) of the Act.

If the noncitizen demonstrates the existence of the required extreme hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. *Id.* 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 an 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 foreign national 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 record establishes that the Applicant is inadmissible for fraud or misrepresentation and if so, whether the Applicant has demonstrated that her application under section 212(i) of the Act to waive her inadmissibility merits a favorable exercise of discretion. In support of the application, the Applicant submitted affidavits from herself, her qualifying relative mother, her stepfather, and her brother, medical records, financial records, family identification documentation, letters of support, and country conditions information.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible for fraud or misrepresentation, specifically for intentionally concealing the fact that she had previously worked as a registered nurse (RN) in the Philippines on her U.S. Department of State (DOS) Form DS-260, Nonimmigrant Visa Application (visa application), when applying for an F-1 student visa in 2014 to obtain an Associate's Degree as an emergency medical technician (EMT) in the United States. At the time of her adjustment of status interview with USCIS in August 2020, the Applicant stated that she worked full-time as an RN in the Philippines from 2008 to 2013, and did not indicate any additional employment. However, as the Director noted, her visa application did not include her RN employment and instead, only indicated that she worked at [redacted] from November 2008 to December 2010 as a Customer Service Representative, [redacted] from September 2011 to September 2012 as a Customer Service Representative, and [redacted] her spouse's family business. When confronted with these discrepancies during her USCIS interview, she admitted that it was her mistake and claimed that these were only side jobs and she had worked as a full time RN in the Philippines. She further admitted that she did not disclose her employment as an RN because she was afraid that she would not be able to secure an F-1 student visa to the United States. Consequently, the Director determined that the Applicant falsely represented her employment information on her visa application and her intending immigrant intent in order to obtain an immigration benefit in the form of an F-1 nonimmigrant student visa.[1]

[1] The Director also determined that contrary to the Applicant's sworn testimony that she never worked in the United States without authorization, USCIS records and her testimony demonstrated that she started working in December 2016 at [redacted] without approved work authorization from USCIS. On appeal, the Applicant submits sufficient evidence of her authorization for employment with a Post-Completion OPT Employment Authorization Document (EAD)

In making a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act, there must be evidence in the record showing that a reasonable person would find that an applicant used fraud or that they willfully misrepresented a material fact in an attempt to obtain a visa, other documentation, admission into the United States, or any other immigration benefit. 8 *USCIS Policy Manual* J.3(A)(1), https://www.uscis.gov/policymanual.

A willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. *Parlak v. Holder*, 578 F.3d 457 (6th Cir. 2009). For a misrepresentation to be found willful, it must be determined that the applicant was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-,* 7 I&N Dec. 161 (BIA 1956). The misrepresentation must be made with knowledge of its falsity. *Id.* at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we "closely scrutinize the factual basis" of a finding of inadmissibility for fraud or misrepresentation because such a finding "perpetually bars an alien from admission." *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994); *Matter of Tijam,* 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979).

A misrepresentation is "material" if 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 their eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-*, 27 I&N Dec. 105, 113 (BIA 2017). The applicant has the burden to demonstrate that any line of inquiry shut off by the misrepresentation was irrelevant to the original eligibility determination. *See* 8 *USCIS Policy Manual, supra,* at J.3(E)(4).

Additionally, to be issued a nonimmigrant visa to the United States, foreign nationals must overcome the statutory presumption found in section 214(b) of the Act, 8 U.S.C. § 1184(b), that they are intending immigrants. Therefore, in seeking nonimmigrant admission to the United States, a visa applicant must establish to the satisfaction of a DOS consular officer that they have no intention of abandoning their foreign residence. *See* 9 FAM§ 401.1-3(E).

On appeal, the Applicant contends that she is not inadmissible for fraud or willful misrepresentation because she did not make any affirmative misrepresentations and that, regardless, the alleged misrepresentations relating to her employment history are not material. Specifically, the Applicant argues that the bulk of the alleged misrepresentations cited for the inadmissibility finding are in the nature of omissions, rather than affirmative representations, and even if she had misrepresented her employment history as an RN, it was not material because disclosing the true facts would not have

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card valid from January 2017 to January 2018 and contends that any unauthorized employment beginning in December 2016 would have been for less than one month, which would not affect her eligibility for adjustment of status. *See* section 245(k) of the Act (providing that an Applicant who is eligible to receive an immigrant visa as a skilled worker under section 203(b)(3) of the Act may adjust status pursuant to section 245(a) of the Act if the Applicant, subsequent to a lawful admission has not, for an aggregate period exceeding 180 days, engaged in unauthorized employment). Regardless, as explained in this decision, the Applicant remains inadmissible for fraud or misrepresentation on other grounds.

resulted in her ineligibility for an F-1 student visa.[2] The Applicant cites to *Matter of G-,* 6 I&N Dec. 9 (BIA 1953) (providing that the fact that an Applicant failed to volunteer additional information does not establish a conscious concealment of fraud and misrepresentation) and the DOS Foreign Affairs Manual (FAM) at 9 FAM § 302.9-4(B)(5)(c)(6)(a)(ii) (stating that an assessment of ineligibility is not complete until the true facts considering the applicant's misrepresentation have been considered and, if the true facts support a finding that the applicant is eligible for a visa, the misrepresented fact is not material).

We agree that silence or failure to volunteer information does not, in and of itself, constitute material misrepresentation for purposes of determining inadmissibility under section 212(a)(6)(C)(i) of the Act because it "does not establish a conscious concealment or fraud and misrepresentation." *Matter of G-,* 6 I&N Dec. 9 (BIA 1953), *superseded on other grounds by Matter of F-M-,* 7 I&N Dec. 420 (BIA 1957). However, although the Applicant argues on appeal that she merely omitted her employment as an RN when applying for her F-1 student visa, she admitted in a signed, sworn statement during her USCIS interview that she worked full-time as a an RN in the Philippines but intentionally withheld that information and affirmatively listed only her "side jobs" because she feared that her F-1 student visa would be denied.[3] Therefore, the record establishes that the Applicant intentionally made a false representation on her visa application with respect to her employment history. Further, the Applicant's misrepresentation in concealing her nursing degree and subsequent work as an RN on her visa application is material as it shut off a line of inquiry which was relevant to her F-1 student visa eligibility in that her true employment history was relevant, but could not be considered by the Consular Officer, in assessing whether she overcame the statutory presumption in section 214(b) of the Act that she was an intending immigrant. Disclosing that she already had a nursing degree in the Philippines and had worked as an RN for more than five years there when applying for an F-1 student visa to obtain an Associate's Degree in the United States as an EMT would reasonably have led to additional questions by the Consular Officer to determine whether the Applicant was actually an intending immigrant and therefore ineligible for the visa she sought. Moreover, the record shows that the Applicant in fact did remain in the United States once her F-1 status expired, is working as an RN, has an approved immigrant petition rooted in that employment, and is seeking adjustment of status based on her nursing degree and RN experience. The Applicant's misrepresentations regarding her past employment to the Consular Officer were therefore material. As such, the record establishes that

[2] The Applicant also argues that part of the basis for the alleged misrepresentations on her student visa application, the Applicant's testimony at her interview, is ostensibly derived from the interviewing officer's memory, rather than a transcript or record of the interview and testimony. This is incorrect as the record indicates that the Director relied on the Applicant's statements as recorded on her signed, sworn statement completed during the Applicant's 2020 adjustment interview. The Applicant also argues that the alleged misrepresentations also rely on her answers to questions on the Form DS-260 visa application, of which a copy was not provided to her. The visa application was completed by the Applicant in 2014 when applying for her nonimmigrant visa and, as such, presumably she has knowledge of her responses on the nonimmigrant visa application. Further, the Director provided the Applicant with the pertinent derogatory information at issue within the application, namely the Applicant's failure to disclose relevant employment history, which the Applicant admits to having intentionally withheld.

[3] In her statement submitted in support of the Form I-601, the Applicant explained that it was difficult to find a full-time job as an RN in the Philippines, and when she did, it would not pay well, so she did volunteer work as an RN to gain experience but later started working customer service jobs because they paid her more money. She stated that she listed her "side jobs" in the employment history section of her visa application because she had not considered the importance of listing her volunteer work since she was applying for a student visa. Insofar as the Applicant is asserting that she did intentionally misrepresent herself on her student visa application, this is contrary to her statement during her 2020 adjustment interview that she did not include her RN employment because she feared her visa application would be denied.

the Applicant is 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. Discretion

The record supports the Director's determination that the Applicant's qualifying relative, her LPR mother, would suffer extreme hardship if the waiver is not granted. At issue, however, is whether the Applicant merits a waiver of inadmissibility as a matter of discretion.

In denying the Form I-601 and concluding that the Applicant had not established she warrants a favorable exercise of discretion, the Director found that the favorable factors for consideration were outweighed by the adverse factors in this case.

On appeal, the Applicant asserts that the Director erred in balancing the favorable and unfavorable factors in this case because they overwhelmingly relied on a single favorable factor and did not take into account the totality of the Applicant's circumstances. The Applicant contends that the Director single-mindedly focused on the negative factor, namely her misrepresentations relating to her employment history when filing for her nonimmigrant visa and her purported unauthorized employment,[4] and disregarded the constellation of facts related to the positive factors. These positive factors, as reflected in the record, include the Director's finding of extreme hardship to the Applicant's qualifying relative LPR mother; hardship to her U.S. citizen stepfather, a disabled military veteran, for whom she provides healthcare and other direct aid; hardship to her spouse and her 11-year-old daughter, who would be forced to move back to the Philippines with her; her financial support to her mother and stepfather in the United States; her emotional support to her family, but most importantly her mother who is the primary caretaker of her ailing stepfather; the fact that the Applicant has never been arrested or convicted for any criminal offense anywhere in the world; and, notably, the fact that she is a practicing RN and EMT in the United States, which has experienced a shortage of healthcare workers during the COVID-19 pandemic (throughout which the Applicant worked as an RN risking her own health and safety).

Upon de novo review, the record does not show that the Director considered all the favorable factors reflected in the record. The Director's decision, in listing the evidence of favorable factors submitted by the Applicant, only noted evidence of "[f]amily ties to the United States and the closeness of the underlying relationships." Therefore, the record is unclear as to whether the Director considered the remaining evidence in the record relating to the Applicant's other positive equities, including the extreme hardship to her qualifying relative, a significant favorable factor, in making the adverse discretionary determination. Accordingly, we will remand the matter to the Director to consider all of the evidence of positive and negative equities in determining whether the Applicant warrants a favorable exercise of discretion such that her adjustment of status application may be approved.

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

[4] The Director also cited to the Applicant's purported misrepresentation that she did not engage in unauthorized employment in the United States; however, as explained, the Applicant has overcome this finding on appeal. Consequently, this is no longer an adverse factor that weighs against the Applicant.