U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24535586

Date: MAR. 21, 2023

Appeal of Des Moines, Iowa Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, who claims to be a native and citizen of Eritrea and is currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Des Moines, Iowa Field Office denied the application, concluding that the record did not establish that the Applicant's lawful permanent resident spouse, his only qualifying relative, would experience extreme hardship if the waiver was not granted. The matter is now before us on appeal.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *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 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

In [redacted] 2016, U.S. Customs and Border Protection (CBP) encountered the Applicant in [redacted] Texas. The Applicant stated under oath to CBP that he was born in Eritrea in [redacted] 1987, his name was K-T-T-, he had flown from Dubai to Brazil during his travel to the United States, he had never applied for or held asylee or refugee status in any other country, he had never used another name or date of birth, and he had not been in Europe. He was referred for removal proceedings, and filed a Form I-589, Application for Asylum or Withholding of Removal, with the Immigration Court in March 2017. The Form I-589 and related documents show that he claimed to the Immigration Court that his date of birth is in [redacted] 1987, his true name is K-T-T-, and he traveled to the United States from Eritrea to Sudan, and then to "ethiopia-dubai-brazil-peru-ecuador-colombia-panama-costarica-nicaragua-honduras-guatemala-mexico and then US." The Immigration Court granted the Applicant's application for asylum in May 2017. However, after the Applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, as an asylee in June 2018, USCIS records revealed that he had previously attempted to enter Mexico in 2015 using an Italian refugee document showing his date of birth as in [redacted] 1987 using a different spelling of his first and middle names.[1] As indicated above, the Applicant did not disclose the fact that he had traveled through Italy and had been issued Italian refugee documents during his asylum proceedings, although the Form I-589 specifically inquired about "each country" through which he traveled or in which he resided after leaving Eritrea. The Applicant thereafter filed this Form I-601 waiver application, in which he confirmed that he had been in Italy and had permission to the live there, but did not disclose this information because he was afraid of Eritrean agents, living in despair and depression, and wanted a safe haven. Based on the foregoing, the Director concluded that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation because he had willfully misrepresented his identity and immigration history and had failed to disclose his status in Italy in order to gain a benefit under the Act. The Director also denied the Applicant's waiver application, concluding that the Applicant had not demonstrated that a qualifying relative would suffer extreme hardship upon denial of the waiver.

On appeal, the Applicant does not contest the Director's conclusion that, and our de novo review of the record establishes, he is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting material facts about his immigration history and identity, including his possession and use of refugee documents from Italy with different identity information, when he filed an asylum application, and that he therefore requires a waiver of inadmissibility under section 212(i) of the Act. The sole issue on appeal is whether the Applicant has demonstrated that the qualifying relative, his

[1] The Applicant has also asserted that someone gave him documents to use to travel but took them away when he reached Brazil. It is unclear whether the documents he used to travel to Brazil included biographical data for a third identity, and the Applicant does not describe any of the information that was on the documents. Regardless, the record before us also does not establish whether the Applicant's true name and date of birth are on the refugee documents from Italy, or the information he claimed to CBP, the Immigration Court, and now USCIS within the context of his Form I-485.

lawful permanent resident spouse, would suffer extreme hardship upon denial of the waiver, as required for a section 212(i) waiver.

Applicants must demonstrate that denial of the waiver application would result in extreme hardship to a qualifying relative or relatives. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant; or 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. In the present case, the record contains a statement from the Applicant's spouse indicating that she intends to remain in the United States 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 upon separation.

Documentation submitted with the waiver application includes, but is not limited to, a statement from the Applicant's spouse, statements from the Applicant's cousin and a childhood friend, and copies of the Applicant's marriage certificate and his U.S. citizen child's birth certificate. The Applicant contends that his spouse would experience medical, financial, and emotional hardship upon separation. The Applicant further asserts that his child would also suffer upon separation; however, we may consider the hardship to the Applicant's child only as it affects his qualifying relative spouse. *See* 9 *USCIS Policy Manual*, *supra*, at B.4(D)(2). The Applicant submits a brief on appeal, but does not include additional documents.

Regarding medical hardship, the Applicant's spouse claims that she has suffered from constant back pain since giving birth to their child. She contends that her husband helps her at home and outside the home in different tasks that are essential to their family; however, she does not describe any tasks for which she requires his assistance. The record also does not contain medical documentation for the Applicant's spouse or any statement from a treating physician describing her medical conditions or prognoses including the frequency and severity of her symptoms, any prescribed treatments, and the need for any assistance.

Concerning financial hardship, the Applicant argues that he is the sole provider of income for his spouse and child. The Applicant's spouse, cousin, and childhood friend also state that the Applicant is the only one who earns money and that his spouse is a housewife who devotes all of her time to taking care of their daughter and home. The Applicant's spouse states that the Applicant established his own trucking business and made it successful in a short span of time. The Applicant provides documents showing that he organized a limited liability company in Iowa in August 2021, and that he holds title to four semi-trailers and trucks. He provided Internal Revenue Service (IRS) tax returns and his related Forms W-2, Wage and Tax Statement, for 2019 and 2020; however, these predate the birth of his child and his marriage and therefore do not reflect that he was supporting his spouse and their child. The Applicant included bank statements for a period of time beginning in September 2021. Although the statements show that the account is only in the Applicant's name, they also show that he transferred money from his bank account to a separate account held in his spouse's name, in addition to other individuals' accounts. However, the documentation submitted with the waiver does not

include separate financial records for the Applicant's spouse, and, although she claims that she hurt her back, the record does not show that she is physically unable to work and support herself if she and the Applicant were separated. Consequently, the Applicant has not shown that the financial impact of separation upon his spouse is more than the common or typical hardship resulting from deportation.

With regard to emotional hardship, the Applicant claims in his appellate brief that he and his spouse work as a team to ensure that the family's financial and emotional needs are met. As a consequence, he contends that his departure would destroy the delicate balance they have worked to establish in the United States. He submits a [redacted] 2021 birth certificate for his daughter, and a marriage certificate showing that he and his spouse married in Iowa [redacted] 2022. The Applicant also suggests in his appellate brief that he and his spouse have a lengthier relationship than he had previously documented in that they had a religious marriage performed in a church "since 2009." However, the Applicant's spouse was born in 1999; therefore, she would have been nine years old at the time of their claimed marriage, and the Applicant did not submit any documents to show that they were married prior to their 2022 civil ceremony in Iowa. Moreover, the Applicant was not present in the United States until 2016, and other information in his administrative record, including his initial statements to CBP in 2016 and his 2020 tax returns, reflect that he has continuously claimed to be single since then.

In discussing emotional hardship to herself, the Applicant's spouse states that she has known the Applicant for years, that they have a daughter born in [redacted] 2021, that she relies on the Applicant for moral and emotional support, that he and their daughter share a special bond, and that she cannot imagine their child living without her father by her side. The Applicant's spouse claims that the Applicant is her best friend and the "only family" she has in the United States, that they plan to spend the rest of their lives together, and that if he leaves the country then her life and that of her child would be unbearable. However, apart from these general assertions, she does not further explain how he supports her or provide information about her claim that the Applicant is the only family she has in the United States. The Applicant's cousin and his childhood friend claim that the Applicant's spouse is already emotionally drained and distraught at the thought of living without her husband. Although we acknowledge the statements of the Applicant's spouse regarding the emotional strain the separation may cause and her claim to have no other family, the record does not contain further detail about the impact of any emotional hardship that the spouse may experience in her daily life to establish that she would suffer hardship that is beyond the common results of deportation. Additionally, USCIS records reflect that subsequent to the spouse's hardship statement, the Applicant was arrested for domestic abuse against her in [redacted] 2022, and his spouse obtained a protection order that appeared to prohibit him from certain forms of contact with her and their child. The record on appeal does not include updated statements from the Applicant or the spouse addressing whether the spouse would face emotional hardship if separated from the Applicant in light of the Applicant's arrest. Regardless, we recognize that the Applicant's spouse may face hardships upon separation and acknowledge the evidence of such hardships in the record; however, the Applicant has not shown that, when considered in the aggregate, the hardships described go beyond the common results of separation from a loved one and rise to the level of extreme hardship.

Because the Applicant has not demonstrated extreme hardship to a qualifying relative if he is denied admission, we need not consider whether he merits a waiver in the exercise of discretion. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.