U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25251610

Date: MAR. 22, 2023

Appeal of New York City, New York Field Office Decision

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

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 New York, New York Field Office denied the Applicant's waiver application, concluding that he was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, and that the record did not establish his U.S. citizen spouse would suffer extreme hardship upon his removal from the United States or that a favorable exercise of discretion was warranted. The matter is now before us on appeal wherein the Applicant claims he is not inadmissible under section 212(a)(6)(C)(i) and alternatively that the Director erred in determining his spouse would not suffer extreme hardship if he were denied admission and that he did not warrant a favorable exercise of discretion. 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.

Section 212(a)(6)(C)(i) of the Act renders inadmissible 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, admission into the United States, or other benefit provided under the Act. More specifically, a noncitizen is inadmissible under the Act if the person procured, or sought to procure, a benefit under U.S. immigration laws; the person made a false representation; and the false representation was willfully made, material, and made to a U.S. government official. *See generally* 8 *USCIS Policy Manual* J.2(B), https://www.uscis.gov/policymanual; s*ee also Matter of D-L- & A-M-*, 20 I&N Dec. 409, 412-413 (BIA 1991); *Matter of Tijam*, 22 I&N Dec. 408, 424 (BIA 1998); *Matter of Mensah*, 28 I&N Dec. 288, 293 (BIA 2021). Thus, a noncitizen is not inadmissible under section 212(a)(6)(C)(i) of the Act where there is inadequate evidence that the applicant presented fraudulent documents to a United States Government official in an attempt to enter on those documents. *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994).

The Applicant arrived in the United States in October 2000 after being presented to immigration officers by his airline as seeking "Transit Without a Visa" (TWOV) with a Singaporean passport. The Applicant completed a Form I-867AB, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act (sworn statement), as well as a credible fear interview, and was placed into

removal proceedings as an arriving alien. The record reflects that he was ordered removed *in absentia* and that the order remains unexecuted.

As indicated above, the Director denied the Form I-601 after concluding the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act because he used a fraudulent passport to enter the United States, did not establish that his spouse would suffer extreme hardship if they were separated, and that the waiver did not warrant approval as a matter of discretion based on his disregard for the law and having committed fraud.

On appeal, the Applicant claims, in part, that he was wrongly charged and is in fact not inadmissible under section 212(a)(6)(C)(i) of the Act because he never presented his fraudulent passport or misrepresented any facts to government officials.

The pertinent issue on appeal is whether the Applicant is inadmissible under Section 212(a)(6)(C)(i) for willfully mispresenting a material fact and more specifically for presenting a fraudulent passport to government officials to obtain admission into the United States. We have reviewed the entire record and for the reasons discussed below conclude that it does not support a finding that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

As noted above, if there is inadequate evidence that the applicant presented fraudulent documents to a United States Government official in an attempt to enter on those documents, he is not inadmissible. The record in this case indicates that the Applicant obtained a fraudulent Singaporean passport in Panama that he used to board his flight to the United States. A Form I-275, Withdrawal of Application for Admission/Consular Notification, indicates that the Applicant was arriving into a transit lounge when he was he intercepted, immediately inspected, and determined to be a national of China. He was transferred to a secondary area and completed his sworn statement wherein he indicated that he did not present any documents to a government official because "the airline representative had the passport." Our review of the record does not reveal evidence that contradicts the Applicant's statement. The record therefore does not reflect that the Applicant presented the Singaporean passport to a government official.

As such, we find that the Applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act as determined by the Director. As this is the sole ground of inadmissibility identified in the Director's denial, the Applicant does not require a waiver based on the Director's inadmissibility finding and the appeal is dismissed as moot.

ORDER: The appeal is dismissed.