U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26321004

Date: MAY 11, 2023

Queens, New York Field Office Decision

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

The Applicant, a native and citizen of India currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR), based on his immigrant classification under the Violence Against Women Act (VAWA), codified at section 204(a)(1)(A)(vii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(vii). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) and seeks a waiver of that inadmissibility. *See* section 212(i) of the Act, 8 U.S.C. § 1182(i).[1]

The Director of the Queens, New York Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), explaining the Applicant was notified that he was also inadmissible for unlawful presence under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I) and because he had not established his eligibility for a waiver pursuant to section 212(a)(9)(C)(iii) of the Act, adjudicating his waiver under section 212(i) of the Act would serve no purpose. 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 has been unlawfully present in the United States for an aggregate period of more than one year, and who enters or attempts to reenter the United States without being admitted is inadmissible. Section 212(a)(9)(C)(i)(I) of the Act. However, this inadmissibility may be waived in the case of a VAWA self-petitioner if there is a connection between their battering or subjection to

[1] The Applicant also sought a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) for unlawful presence. The Director determined the Applicant was not inadmissible for unlawful presence under section 212(a)(9)(B) of the Act and did not need a waiver pursuant to section 212(a)(9)(B)(v) of the Act.

extreme cruelty and their departure, reentry, reentries, or attempted reentry into the United States. Section 212(a)(9)(C)(iii) of the Act.

Any foreign national 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. 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 foreign national or, in the case of a VAWA self-petitioner, the foreign national demonstrates extreme hardship to their U.S. citizen, lawful permanent resident, or qualified foreign national parent or child. Section 212(i) of the Act.

II. ANALYSIS

A. Relevant Background and Procedural History

In approximately 1990, the Applicant entered the United States without being inspected, admitted, or paroled. In 1993, the Applicant was placed in removal proceedings and in 1998, an Immigration Judge granted him voluntary departure. U.S. Citizenship and Immigration Services (USCIS)' records indicate that the Applicant left the United States in 1999 and reentered in 2000 without being inspected, admitted, or paroled. In 2001, the Applicant provided a sworn affidavit attesting to entering the United States in 2000 using a fraudulent passport. In November 2018, the Applicant filed a VAWA petition, and Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application).[2] The Applicant's VAWA petition was approved in 2018. The Applicant filed the instant waiver application in December 2021. The Director issued a request for evidence (RFE) seeking information surrounding the Applicant's entry into the United States in 2000. The Director then issued a second RFE explaining that the Applicant's submissions in response to the first RFE did not establish the manner of his entry and he was therefore inadmissible under section 212(a)(9)(C)(i)(I) for accruing more than one year of unlawful presence in the United States. The Director explained in the RFE that the Applicant had to establish a connection between the abuse and the events that triggered the ground of inadmissibility to establish his eligibility for a waiver under section 212(a)(9)(C)(iii) of the Act. The Director also explained that the Applicant had willfully misrepresented the manner of his entry in 2000 and the whereabouts of the passport he used to enter the United States. Therefore, to establish his eligibility for a waiver under section 212(i) of the Act, the Director stated the Applicant must include affidavits and evidence indicating what extreme hardship his qualifying relative would suffer should he be removed from the United States. In the decision denying the waiver application, the Director determined the Applicant's response to the second RFE did not establish a connection between the abuse and his reentry into the United States, noting that he responded that his manner of entry was irrelevant for eligibility. Because the Applicant remained inadmissible under 212(a)(9)(C)(i), the

[2] The Applicant has also been the Beneficiary of a Form I-130, Petition for Alien Relative, filed by his first spouse and approved in 1996, and a subsequent Form I-130 filed by his second spouse and approved in 2000. This is the Applicant's third adjustment application. The Applicant was notified of his ineligibility under 212(a)(6)(C)(i) of the Act in prior decisions by USCIS and he does not contest this inadmissibility on appeal.

Director did not review his claim that his two U.S. citizen children would suffer extreme hardship upon his removal or relocation and dismissed the application as a matter of discretion.

On appeal, the Applicant submits a brief by counsel asserting, in relevant part, that the Applicant's reentry in 2000 was on account of his spouse's abuse. However, the Applicant does not provide independent evidence, such as an affidavit, substantiating his assertions that his reentry in 2000 was on account of his spouse's abuse. Counsel's assertions are therefore not corroborated in the record and are not evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1998) (providing unsupported assertions of counsel do not constitute evidence). The Director did not err in denying the waiver application as a matter of discretion. No purpose would be served in considering the hardship to the Applicant's children and adjudicating the waiver request for unlawful presence under section 212(i) of the Act because the Applicant will remain inadmissible under section 212(a)(9)(C)(i) of the Act. Therefore, we will not address the Applicant's arguments regarding extreme hardship on appeal. The waiver application remains denied.

ORDER: The appeal is dismissed.