U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26269821

Date: JULY 19, 2023

Appeal of Nebraska Service Center Decision

Form I-821, Application for Temporary Protected Status

The Applicant, a national of Nepal, seeks Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a.

The Director of the Nebraska Service Center denied the Form I-821, concluding that the Applicant was inadmissible to the United States for fraud or misrepresentation of material facts and, as his request for a waiver of inadmissibility had been denied, he was ineligible for TPS. The matter is now before us on appeal.

On appeal, the Applicant asserts that the Director's decision was in error, because the misrepresentation was retracted before he first applied for TPS in 2015.

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.

With certain limited exceptions, noncitizens are ineligible for TPS if they are inadmissible to the United States as immigrants. Section 244(c)(1)(A)(iii) of the Act. 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). TPS applicants who are inadmissible for fraud or misrepresentation may seek a waiver under section 244(c)(2)(A)(ii) of the Act, and U.S. Citizenship and Immigration Services (USCIS) may grant such a waiver for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

The record reflects that in 2010 the Applicant married a U.S. citizen, who filed a Form I-130, Petition for Alien Relative (I-130 petition), to classify him as her spouse for immigration purposes, and the Applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on that basis. Although the Applicant's spouse ultimately withdrew the petition she filed on his behalf, an investigation of a marriage fraud ring led to the conviction of the individual who identified the Applicant's and his U.S. citizen spouse's marriage as one of several marriages he facilitated for

immigration purposes.[1] In addition, the Applicant's U.S. citizen spouse provided a statement that she married him solely so he could obtain permanent resident status in the United States and that she was paid for entering into the marriage.

In 2015 the Applicant filed his initial TPS request. In October 2017, the Director issued a notice of intent to deny (NOID), informing the Applicant that the above evidence indicated he was inadmissible under section 212(a)(6)(C)(i) of the Act because he sought to obtain an immigration benefit through marriage fraud; the Director also advised the Applicant that he could seek a waiver of inadmissibility under section 244(c)(2)(A)(ii) of the Act. The Applicant filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, but the Director denied the waiver request in 2018, concluding that the Applicant was inadmissible for fraud or misrepresentation and he did not establish that a waiver was warranted in the exercise of discretion. Consequently, as the Applicant remained inadmissible, the Director denied his TPS request in a separate decision and we dismissed the Applicant's appeal of that decision in 2019. The Director also denied the Applicant's three subsequent TPS requests on the same basis.

In 2021, the Applicant filed the instant Form I-821 but the Director again denied it concluding that the Applicant was inadmissible for having attempted to procure adjustment of status to that of a lawful permanent resident through a marriage fraud scheme, and was therefore ineligible for TPS pursuant to section 244(c)(1)(A)(iii) of the Act.

The Applicant avers that the denial was improper because it was based on the I-130 petition, which his now ex-U.S. citizen spouse withdrew in 2013, thus retracting any misrepresentation. We acknowledge the Applicant's statements; however they are insufficient to overcome the basis for the denial of his TPS request. Specifically, given the evidence indicating that the marriage was arranged solely for immigration purposes, the withdrawal of the I-130 petition by the Applicant's ex-spouse alone is not adequate to establish that the Applicant did not seek to obtain an immigration benefit by fraud or misrepresentation of material facts. First, only a U.S. citizen or lawful permanent resident petitioner may withdraw an I-130 petition. 8 C.F.R. § 103.2(b)(6). Moreover, for a retraction to be effective an applicant or petitioner must correct their misrepresentation before being exposed by the officer or U.S. government official or before the conclusion of the proceeding during which they gave false testimony. *See generally* 8 *USCIS Policy Manual* J.3(D)(6), https://www.uscis.gov/policy-manual. Here, in her 2013 withdrawal letter the Applicant's ex-spouse did not acknowledge any misrepresentations on the I-130 petition she filed on the Applicant's behalf, stating only that she and the Applicant were no longer together and she wanted to "drop the case." The Applicant does not claim, and the record does not show, that he retracted or recanted any false statements about the nature of his relationship with his ex-spouse before the Director advised the Applicant of the derogatory information concerning his marriage in the 2017 NOID. Consequently, the Applicant has not demonstrated that the misrepresentations about his marriage were retracted and eliminated for immigration purposes, and that he is therefore not inadmissible under section 212(a)(6)(C)(i) of the Act.

[1] The individual was convicted in 2015 upon a plea of guilty to conspiracy to commit fraud in connection with immigration documents in violation of 18 U.S.C. §§ 371 and 1546(a). *See U.S. v. Esparza*, 3:15-CR-112-K (N.D. Tex. Jul. 16, 2015).

The Applicant also claims that USCIS has never provided him with any evidence regarding the allegations of his inadmissibility under section 212(a)(6)(C)(i) of the Act. However, as stated, the Director advised the Applicant of the specific facts and evidence underlying the determination of his inadmissibility in the 2017 NOID, as well as in the 2018 denial of his Form I-601, which the Applicant did not contest.

Furthermore, the burden of proof to establish admissibility during the immigration benefit-seeking process is always on the applicant and never shifts to the government. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978).

The Applicant did not appeal the adverse decision on his request for a waiver of inadmissibility, and he does not specifically address the derogatory inadmissibility-related information the Director referenced in the denial of the instant Form I-821.

Consequently, the Applicant has not overcome the grounds for the denial of his Form I-821, and he remains ineligible for TPS absent a favorable reconsideration of his request for a waiver of inadmissibility, which is not before us.

ORDER: The appeal is dismissed.