U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11066036

Date: SEPT. 30, 2020

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility for fraud or material misrepresentation under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this waiver as a matter of discretion if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Santa Clara, California Field Office denied the application, concluding that the record did not establish, as required, that denial of admission would result in extreme hardship to the Applicant's qualifying relative. We dismissed a subsequent appeal on the same grounds. The matter is now before us on a motion to reconsider.

Upon review, we will dismiss the motion to reconsider.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies the above requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

We incorporate our prior decision by reference and will repeat only certain facts as necessary here. On appeal, the Applicant contested his admissibility and asserted that the misrepresentation of his marital status, as married instead of divorced, was not material. We concluded that the Applicant's misrepresentation was material because disclosing his true marital status would likely have led to additional questions to determine whether his intent was to enter the United States for a limited duration.

On motion, the Applicant asserts that we did not follow the guidance set forth in *Kungys v. United States*, 485 U.S. 759, 760 (1988), or the *USCIS Policy Manual* regarding how to determine whether a misrepresentation is material. He also claims that because he has two children, who were born in 1982

and 1999, his marital status was only one factor involved in the analysis of whether he had significant ties to his country and was likely to return there.

As stated in our prior decision, a misrepresentation is material if the misrepresentation tends to shut off a line of inquiry which is relevant to the foreign national's admissibility and that would predictably have disclosed other facts relevant to his or her eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-*, 27 I&N Dec. 105 (BIA 2017). In *Kungys*, the U.S. Supreme Court held that "the test of whether concealments or misrepresentations are "material" is whether they can be shown by clear, unequivocal, and convincing evidence to have been predictably capable of affecting, i.e., to have had a natural tendency to affect, the [immigration officer's] decisions."

Contrary to the Applicant's assertions, his misrepresentation regarding his marital status shut off a line of inquiry which was relevant to his visa eligibility and had a natural tendency to affect the decision of whether to issue him a visa. Disclosing his true marital status would likely have led to additional questions to determine whether his intent was to enter the United States for a limited duration, and it was thus relevant to his eligibility for a visa, even if it was not the sole factor in determining his eligibility. This additional line of questioning may have resulted in a determination that the Applicant was an intending immigrant, regardless of the presence of two daughters – a teenager and an adult – in Vietnam. Further, as noted in our prior decision, the Applicant married his current spouse in [redacted] 2017, within six months of his arrival in the United States, which further indicates that he was an intending immigrant when he applied for his nonimmigrant visa in 2016.[1]

The Applicant also submits new evidence on motion,[2] which consists of a printout regarding nail technician salaries in Vietnam. On appeal, the Applicant's spouse claimed that she would experience financial hardship upon relocation resulting from the loss of her nail salon business, difficulty starting a new business in Vietnam, and obtaining similar employment for comparable income. On appeal, we determined that the record did not contain evidence relating to the lack of employment opportunities in Vietnam or establishing that the Applicant's spouse would be unable to obtain employment and reestablish a life in Vietnam.[3] We find that the new evidence does not overcome our prior determination regarding the Applicant's spouse ability to find employment in Vietnam or the insufficiency of evidence to support the claim of extreme hardship upon relocation. 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).

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[1] The record reflects that the Applicant divorced his former spouse in 2014, and in 2015, he met his current spouse while she was visiting her family in Vietnam. The Applicant applied for his visa in January 2016, entered the United States in December 2016, and married his spouse in [redacted] 2017.

[2] The Applicant indicated that he was submitting a motion to reconsider, which must establish that our decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Although new evidence cannot be considered in support of a motion to reconsider, it may support a motion to reopen, which is based on documentary evidence of new facts. 8 C.F.R. § 103.5(a)(2).

[3] The record reflects that the Applicant's spouse immigrated to the Unites States from Vietnam in 2012.

The Applicant has not shown that we erred as a matter of law or USCIS policy in finding, based on the evidence in the record of proceedings, that he was inadmissible for a material misrepresentation and that he did not establish extreme hardship to a qualifying relative as required for a waiver of inadmissibility. In addition, the Applicant did not submit evidence of new facts that would establish eligibility for a waiver. The waiver application therefore remains denied.

ORDER: The motion to reconsider is dismissed.