U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6622595

DATE: JUNE 17, 2020

Appeal of Raleigh-Durham, North Carolina Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Pakistan, seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for fraud or misrepresentation.

The Director of the Raleigh-Durham, North Carolina Field Office denied the application, concluding that the record did not establish that the Applicant's only qualifying relative, his U.S. citizen spouse, would experience extreme hardship because of his continued inadmissibility. The Director also found that the Applicant did not merit a waiver as a matter of discretion.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Except where a different standard is specified by law, an applicant must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). This office reviews the questions in this matter *de novo*. *See 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 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 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. If the foreign national demonstrates the existence of the required hardship, then he or she must also show that USCIS should favorably exercise its discretion and grant the waiver. 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).

In addition to demonstrating the required extreme hardship under section 212(i) of the Act, the foreign national must also show that U.S. Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver.

II. ANALYSIS

The issues on appeal are whether the Applicant is inadmissible for fraud or misrepresentation and whether he has established extreme hardship to his spouse. The record establishes that the Applicant is inadmissible for fraud or misrepresentation and does not establish that his spouse would experience extreme hardship due to his continued inadmissibility. Our decision is based on a review of the record, which includes, but is not limited to, statements from the Applicant and his spouse, a statement from the Applicant's older child, financial records, a licensed professional counselor's evaluation, photographs, and information on conditions in Pakistan.

A. Inadmissibility Under Section 212(a)(6)(C)(i) of the Act

On a July 2016 B1/2 nonimmigrant visitor visa application, the Applicant claimed he was married although he was actually divorced. The Applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for willfully committing fraud or misrepresentation. On appeal, the Applicant contests the finding of inadmissibility. In making a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act, there must be evidence in the record showing that a reasonable person would find that an applicant used fraud or that he or she willfully misrepresented a material fact in an attempt to obtain a visa, other documentation, admission into the United States, or any other immigration benefit. *8 USCIS Policy Manual* J.3(A)(1), https://www.uscis.gov/policymanual.

The Applicant asserts that his misrepresentation was not willfully made. He states that he told the immigration consultant preparing his visa application that he was divorced and he relied on the immigration consultant to properly prepare his visa application. He further states that he was not fully aware that the immigration consultant listed him as married on the visa application.

To find the element of willfulness, a determination must be made that the individual had knowledge of the falsity of the misrepresentation, and therefore knowingly, intentionally, and deliberately presented false material facts. *Id.* at J.3(D)(1). In the case of a misrepresentation made by an attorney or agent, an applicant will be held responsible if it is established that the applicant was aware of the action taken by the representative. *Id.* at J.3(D)(4). First, we note that the Applicant's visa application asked if anyone assisted in filling out the application and the Applicant answered "no" to this question. Second, the Applicant's visa application included information on the spouse's name, date of birth, country of origin, city and country of birth, and address (listed as the same as his). The Applicant has not explained how all of this information was listed on the visa application if he told the immigration consultant that he was divorced. Last, the Applicant's visa application required a

signature certifying that all statements on the application were made by him and true. As the record reflects that the Applicant prepared the nonimmigration visa application himself, listed himself as married with details about his spouse, and included a signature certifying the truth of the statements in the application, we find that he was aware of the representations in the application and therefore willfully misrepresented himself.

The Applicant also asserts that his misrepresentation was not material. A misrepresentation is material if an applicant would be inadmissible under the true facts or if it tends to shut off a line of inquiry which is relevant to the foreign national's admissibility and which might have resulted in a proper determination that he or she is inadmissible. *Matter of D-R-*, 27 I&N Dec. 105 (BIA 2017).

The Applicant claims that it is common for divorced individuals to receive visas, the officer may have granted the visa regardless of his marital status, and the officer may have put more value on his other ties to Pakistan than his marital status. A B1/2 nonimmigrant visitor visa application requires an applicant to establish that he or she has a foreign residence that the individual has no intention of abandoning. 9 FAM 402.2-2(B)(a)(1)(*a*). If the Applicant had a spouse in Pakistan, this would be a strong indication that he would return to Pakistan. By listing that he was married and living with his spouse, the Applicant shut off a line of inquiry related to his intention to return to Pakistan and which might have resulted in a proper determination that he was inadmissible as an intending immigrant. We find that the Applicant's misrepresentation related to his marital status was material.

Therefore, we will not disturb the Director's finding that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully committing fraud or misrepresentation.

B. Extreme Hardship

An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant and 2) if the qualifying relative relocates overseas with the applicant. Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates 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 includes statements from the Applicant's spouse reflecting that she is unable to relocate to Pakistan due to a custody issue with her ex-spouse. The Applicant must therefore establish extreme hardship upon separation from the Applicant.

The Applicant asserts that his spouse would experience emotional, psychological, and financial hardship if she remained in the United States without him. The Applicant's spouse states that she suffered from depression after her divorce in 2013, she has custody of one of her two children, ages 14 and 17, and the Applicant supports her emotionally. The Applicant's spouse mentions that she is suffering from depression and anxiety and she has felt increasingly depressed due to the Applicant's immigration case. The Applicant's spouse was evaluated by a licensed professional counselor who details her symptoms of depression after her divorce and upon separation from her daughter due to a custody order. The counselor states that she would likely experience another significant depressive

episode if the Applicant is denied permanent residence, and she recommended the Applicant's spouse seek therapy. The record includes two prescription notes for anxiety medication for the Applicant's spouse.

The Applicant asserts that his spouse's children are at a critical stage of educational and emotional development, and his deportation will affect them emotionally. The Applicant's spouse's older child states that she and her mother were struggling after her mother's divorce, but the Applicant has been a stabilizing force for them.

In regard to financial hardship, the Applicant's spouse mentions that she has limited skills and works part-time at a department store, and her spouse supports her financially. The record includes various bills for the Applicant and his spouse, their tax returns, and their W-2 forms.

The record reflects that the Applicant's spouse would experience some emotional and psychological hardship without the Applicant. However, the record does not include evidence that she has attended therapy sessions, as recommended, and the results of those sessions. The Applicant has not provided sufficient evidence of the role he plays in his spouse's children's lives and the resulting hardship they, and by extension his spouse, would experience without him. Furthermore, the custody arrangement of the children is not clear from the record. In regard to financial hardship, the Applicant's spouse may experience difficulty without the Applicant's income as he earns the majority of the family income as indicated in their 2018 tax documents, but the record does not include enough evidence of her expenses to determine the level of hardship she would experience without him or that she would be unable to work full-time to meet her expenses. Considering all of the evidence in its totality, the record is insufficient to show that the hardship faced by the Applicant's spouse would rise beyond the common results of removal or inadmissibility if she remains in the United States without the Applicant. We find that the Applicant has not established extreme hardship if his waiver application is denied.

As the Applicant has not met the extreme hardship requirement of section 212(i) of the Act, no purpose would be served in determining whether he merits a waiver as a matter of discretion. The Applicant has the burden of proving eligibility for a waiver of inadmissibility. Section 291 of the Act, 8 U.S.C. § 1361. Here, he has not met that burden.

ORDER: The appeal is dismissed.