U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7648861

DATE: JULY 22, 2020

Appeal of Chicago, Illinois Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Serbia, 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 Chicago, Illinois 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.

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, as explained below, we will remand the matter to the Director for the entry of a new decision.

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. Section 212(i) of the Act.

In this case, the Applicant filed the waiver application due to inadmissibility for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act. The Applicant was admitted to the United States on July 14, 2012, as a P-3 nonimmigrant to work for [redacted] However, the Applicant admitted in December 2013 to an immigration agent that he obtained his P-3 visa through misrepresentation, and his actual intention was to work as a truck driver. On appeal, the Applicant now asserts that he is not inadmissible, but he has not provided sufficient evidence to overcome this finding. Therefore, we will not disturb the Director's finding of inadmissibility.

The Applicant seeks a waiver of this inadmissibility under section 212(i) of the Act and asserts that he established extreme hardship to his spouse. 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 indicating that she will remain in the United States and not relocate to Serbia if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship if she remains in the United States with their two-year-old child.

The Applicant submits material evidence on appeal, including a letter from a licensed professional counselor for the Applicant's spouse describing her psychotherapy, the Applicant's spouse's medical records detailing her history of anxiety, and articles on the effects on children of growing up without a father.

Considering the new claims and evidence submitted on appeal relating to extreme hardship to the Applicant's spouse if she remains in the United States, we find it appropriate to remand the matter for the Director to determine in the first instance if the Applicant has established extreme hardship to her. If the Director finds that he has established extreme hardship to his U.S. citizen spouse, then the Director must consider whether the Applicant merits a favorable exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.