U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6803153

Date: JULY 6, 2020

Appeal of Orlando, Florida Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility 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 a discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Orlando, Florida Field Office denied the application, concluding that the Applicant was inadmissible for fraud or misrepresentation and finding that the record did not establish extreme hardship to her U.S. citizen spouse if the Applicant is denied admission.

On appeal, the Applicant contends that the Director's inadmissibility determination is not supported by the record and therefore she does not need to demonstrate extreme hardship to a qualifying relative.

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. 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 they must also show that USCIS should favorably exercise its discretion. 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).

II. ANALYSIS

As explained below, we agree with the Director's inadmissibility finding under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. To find an individual inadmissible for fraud or willful misrepresentation there must be at least some evidence that would permit a reasonable person to find that the foreign national used fraud or willfully misrepresented a material fact in an attempt to obtain an immigration benefit.[1] The burden of proof is always on the Applicant to establish admissibility.

The Director found the Applicant, a citizen of the Czech Republic, inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact, specifically her intended purpose for traveling to the United States when she applied for a nonimmigrant visa in September 2016. The Director noted that the Applicant was denied admission to the United States in August 2016 under the Visa Waiver Program because immigration officers suspected the Applicant, who had married her U.S. citizen spouse earlier the same month, was an intending immigrant. The Applicant subsequently presented herself to U.S. consular officials, requested a nonimmigrant visa to receive medical treatments in the United States, and claimed that she and her U.S. citizen spouse primarily live in Germany and travel to the United States to conduct business. The Applicant received her nonimmigrant visa and entered the United States on September 17, 2016. Approximately two months later, in November 2016, the Applicant filed her Form I-485, Application to Register Permanent Residence or Adjust Status, while she was in the United States. The Director determined that at the time the Applicant received her nonimmigrant visa, she did not intend to stay temporarily in the United States and found her inadmissible under section 212(a)(6)(C)(i) of the Act.

On appeal, the Applicant contends that she did not misrepresent her intentions for entering the United States when she applied for a nonimmigrant visa. She contends that she truthfully responded that she needed to travel to the United States to receive medical treatments, she intended to stay in the United States temporarily in September 2016, and she intended to reside in Germany with her husband after the treatments. The Applicant asserts that she intended to file an immigrant visa application in Germany, rather than applying for adjustment of status in the United States, but her spouse's business plans for a cable waterski development in Germany fell through due to a lack of funding. At that time, the Applicant and her spouse decided to file the adjustment of status application in the United States because they no longer had a reason to return to Germany for any lengthy period of time.

Considering the record in its totality, we find that the Applicant has not met her burden to establish that she did not misrepresent a material fact in an attempt to obtain an immigration benefit. The Applicant claims she intended to temporarily visit the United States with her nonimmigrant visa in September 2016 and provides documentation, such as letters from her spouse and his business associates regarding the termination of the project in Germany and his decision in October 2016 to stay in the United States. This claim and the submitted evidence are insufficient to overcome the

[1] *8 USCIS Policy Manual* J, 3(A)(1), https://www.uscis.gov/policymanual.

Director's finding that the Applicant misrepresented the material fact that she was an intending immigrant when she received her nonimmigrant visa.

Specifically, the record does not contain adequate evidence to support the Applicant's assertion that when she was issued a nonimmigrant visa on September 13, 2016, she intended to return to the United States to finalize her medical treatments before returning to Germany. We note that the March 2019 letter from the Applicant's doctor indicates she began injection therapy for her back pain in August 2016; received an additional injection on September 1, 2016; and was scheduled for a final injection on September 29, 2016, but this was cancelled because the Applicant had sustained relief. The Applicant does not assert in her affidavit, and the record does not demonstrate, that she received medical treatments in the United States after her nonimmigrant visa was issued on September 13, 2016.

In addition, the denial notes that when the Applicant requested a nonimmigrant visa, she claimed that she and her U.S. citizen spouse primarily lived in Germany and traveled to the United States to conduct business. However, while the submitted documentation shows that her spouse owns property in Germany, the evidence does not demonstrate that the Applicant lived in Germany for any extended period of time. Upon review of the submitted evidence, and in light of the fact that the Applicant filed her adjustment of status application only two months after receiving a nonimmigrant visa and entering the United States, the record supports the Director's finding that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Concerning the Director's determination that the Applicant did not establish extreme hardship to her U.S. citizen spouse, we adopt and affirm the Director's decision, which we incorporate here. On appeal, the Applicant does not contest the Director's finding that she has not demonstrated extreme hardship to her spouse. We note that the record supports the Director's determination that the Applicant did not provide sufficient evidence to show that her spouse's claimed emotional and financial hardship would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. Section 291 of the Act, 8 U.S.C. § 1361. Here, she has not met that burden.

ORDER: The appeal is dismissed.