U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20969441

Date: MAY 02, 2022

Motion on Administrative Appeals Office Decision

Form I-485, Application to Adjust Status

The Applicant, a citizen of Turkey, seeks to adjust his status to that of a lawful permanent resident under section 245 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1255. A noncitizen seeking to adjust status in the United States must be "admissible" or receive a waiver of inadmissibility.

The Director of the Texas Service Center denied the Applicant's request for adjustment of status, concluding that the Applicant was inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. §1182(a)(6)(C)(i), for fraud or misrepresentation, and did not establish eligibility for a waiver. We affirmed the adverse decision on certification and dismissed the Applicant's six subsequent motions to reopen and reconsider[1], explaining that the record reflected he willfully misrepresented material facts, when he violated his nonimmigrant student (F-1) status but then denied the violations on a subsequent nonimmigrant trader/investor (E) visa application. We also explained that USCIS considers a noncitizen inadmissible to the United States under section 212(a)(6)(C)(i) of the Act if there is some evidence that would permit a reasonable person to find that the noncitizen used fraud or willfully misrepresented material facts to gain an immigration benefit.

On his seventh motion, the Applicant files a motion to reconsider and contends that the evidence used to make the finding that he misrepresented himself did not meet a reasonable person standard. More specifically, he contests that his statements during a 2004 Federal Bureau of Investigation (FBI) interview about working "under the table," while on a student visa and then his answers to questions when applying for a subsequent E visa, failing to disclose this violation of his F-1 status, do not equate to a reasonable person finding he made a willful misrepresentation to obtain an immigration benefit. In addition, he asks that we use our discretion to approve his case given his clean criminal record and other positive ties to the United States.

A motion to reconsider must establish that our decision was based on an incorrect application of law or 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 these requirements and demonstrates eligibility for the requested immigration benefit.

[1] We incorporate our prior decision herein.

As stated in our previous decisions, 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. A willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. *Parlak v. Holder*, 578 F.3d 457 (6th Cir. 2009). Here, the Applicant does not deny that he violated his F-1 status, but only claims he did not do his proper due diligence in review of any errors to answers he provided on an E visa application. He explains that at the time of his visa application, he did not remember the 2004 interview with the FBI where he disclosed to them that he was working in violation of his F-1 status. However, the issue in the Applicant's case is not that he did not disclose the FBI interview, but that when he obtained his E visa, in 2009 from the U.S. Consulate in Istanbul, he did not disclose that he had violated his F1 status by working without authorization. The 2004 interview is relevant in that it is evidence the Applicant had knowledge he worked without authorization as a student visa holder and thus, would have been aware that representations to the contrary in 2009, during the process to obtain an E visa, were false. Thus, we will affirm our previous decisions that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having willfully misrepresented a material fact to obtain an E visa and dismiss the motion to reconsider. The Applicant has not shown that our decision was based on an incorrect application of law or 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).

ORDER: The motion to reconsider is dismissed.