U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18912999

Date: MAY 12, 2022

Appeal of New Orleans, Louisiana Field Office Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant will be inadmissible upon his departure from the United States for having been previously ordered removed and seeks permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii). The Applicant was also found inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act. The Director of the New Orleans, Louisiana Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that as no Form I-601, Application for Waiver of Grounds of Inadmissibility, had been approved for his inadmissibility for fraud or misrepresentation, the Applicant would remain inadmissible even if U.S. Citizenship and Immigration Services (USCIS) were to approve his Form I-212. The Applicant filed an appeal of that decision with this office. We review the questions raised in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will remand the matter to the Director for further proceedings.

I. LAW

Any noncitizen 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 U.S. citizen or lawful permanent resident spouse or parent of the noncitizen. If the noncitizen demonstrates the existence of the required hardship, then they must also show that U.S. Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

Section 212(a)(9)(A)(ii) of the Act provides that any noncitizen, other than an "arriving alien" described in section 212(a)(9)(A)(i), who has been ordered removed or departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of a noncitizen convicted of an aggravated felony) is inadmissible. Noncitizens found inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) if, prior to the date of the reembarkation at a place outside

the United States or attempt to be admitted from foreign continuous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

In these proceedings, the Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The record reflects that the Applicant was ordered removed in [redacted] 2001. In [redacted] 2001, the Applicant used an alias to apply for Temporary Protected Status (TPS). He was subsequently granted TPS from 2001 through 2014. The Director determined that because the Applicant obtained TPS by misrepresenting his name, date of birth, and immigration history, the Applicant is inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act.

On appeal, the Applicant asserts that he is not inadmissible under section 212(a)(6)(C)(i) of the Act because he did not willfully misrepresent his identity, but instead relied upon a preparer to translate and complete his TPS applications accurately. He further asserts that even if the record indicated that his misrepresentations were willful, the representations were not material to the benefit he procured.

To be found inadmissible for fraud or willful misrepresentation, there must be at least some evidence that would permit a reasonable person to find that the noncitizen used fraud or willfully misrepresented a material fact in an attempt to obtain an immigration benefit. Because USCIS applications are signed under penalty of perjury, an applicant, by signing and submitting the application or materials submitted with the application, is attesting to the veracity of their claims and documents. See 8 C.F.R. § 103.2(a)(2) ("By signing the benefit request, the applicant or petitioner . . . certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct."); see also 8 USCIS Policy Manual J.3(D)(1), https://www.uscis.gov/policymanual (providing, as guidance, that by signing or making statements under oath, a person asserts his or her claims are truthful). The Applicant's signature on his TPS applications "establishes a strong presumption" that he knew and assented to the contents. Matter of Valdez, 27 I&N Dec. 496, 499 (BIA 2018). Such a presumption can be rebutted through evidence that an applicant was misled and deceived by their representative when preparing the application. Id. The Applicant has not submitted evidence to support his claim that he was misled by the individual who prepared the applications, and the record does not establish that he was unaware of the misrepresentations. Therefore, the record establishes that his misrepresentations were willful.

With respect to materiality, a misrepresentation is material under section 212(a)(6)(C)(i) of the Act when it tends to shut off a line of inquiry that is relevant to the noncitizen'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, 113 (BIA 2017). A person's misrepresentation about his or her identity almost always shuts off a line of inquiry because, at the outset, it prevents the adjudicator from scrutinizing the person's eligibility for a benefit. Matter of S- and B-C-, 9 I&N Dec. 436, 448 (A.G. 1961). However, if the line of inquiry shut off would not have resulted in the denial of the benefit, then the misrepresentation is harmless. Id. at 449.

Here, the Applicant's mirepresentations were not material because they would not have impacted his eligibility for TPS under section 244 of the Act. In adjudicating TPS applications, USCIS may waive any admissibility listed in section 212(a) of the Act except for those related to criminal and drug offenses, national security, or persons who assisted in the Nazi persecution. Section 244(c)(2)(A) of the Act; 8 C.F.R. § 244.3. Thus, the fact that the Applicant was ordered removed would not have rendered him ineligible for TPS. The Applicant's misrepresentation about his identity did not shut off a line of inquiry that would have resulted in the denial of his TPS application as he was eligible for TPS both under his true name and under the false name he provided. As a result, his concealment of his true identity, when he applied for and renewed his TPS, did not constitute a material misrepresentation. Accordingly, the Applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. We will therefore withdraw the Director's decision on the Form I-212 and remand the matter for a determination of whether the Applicant is eligible for a grant of permission to reapply for admission.

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