U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15797430

Date: APR. 27, 2022

Appeal of Minneapolis–St. Paul, Minnesota Field Office Decision

Form 1-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i), for fraud or misrepresentation. Any noncitizen who, by fraud or willfully misrepresenting a material fact, seeks to procure admission into the United States is inadmissible. Section 212(a)(6)(C)(i) of the Act. The noncitizen may apply for a waiver of inadmissibility if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent. If an applicant demonstrates extreme hardship to a qualifying relative, then they must also show they merit a favorable exercise of discretion. Section 212(i) of the Act.

The Director of the Minneapolis–St. Paul, Minnesota Field Office denied the Form I-601 waiver application, concluding that the record did not establish that the Applicant's U.S. citizen spouse would experience extreme hardship if the waiver was not granted. In these proceedings, the Applicant has the 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 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 ground of 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.

To make a finding of willful misrepresentation of a material fact, an immigration officer must determine that an applicant made a false representation to an authorized U.S. Government official; that the misrepresentation was willfully made; and that the misrepresented fact was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975).

An extreme hardship determination depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). 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).

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 to another country with the applicant. Demonstrating extreme hardship under both scenarios is not required if only one of these scenarios would result from the denial of the waiver. A qualifying relative's intent may be established with a statement certifying under penalty of perjury that he or she would either relocate with the applicant or remain in the United States if inadmissibility is not waived. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual. If the record does not establish the qualifying relative's intent to remain or to relocate, then the applicant must show that the qualifying relative would experience extreme hardship in both scenarios.

II. WILLFUL MISREPRESENTATION

The Applicant obtained a B-2 visitor visa in 2019. On the visa application and during the visa interview, the Applicant claimed to be married with two children. She also claimed that she had never been arrested and that she planned to visit her cousin in the United States for 17 days.

The Applicant entered the United States in B-2 status but did not depart the country when her period of authorized stay expired. Approximately 18 months after entering the United Status, the Applicant married a U.S. citizen. During the interview for the Applicant's marriage-based I-485 adjustment application, the Applicant stated that:

- She had not been married before.
- She was currently pregnant but did not have any biological children.
- She had been arrested three times (twice in Togo and once in Ghana).
- She did not know any person with the name listed as her spouse on her B-2 visa application.

The Applicant testified during her I-485 interview that she had not provided false information to the U.S. Government and did not explain the discrepancies in the record. Following the interview, USCIS issued a notice of intent to deny (NOID) the Form I-485 based on a finding of inadmissibility resulting from the Applicant's willful misrepresentation of material facts. The Applicant then filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, which the Director denied together with the Form I-485. The waiver application is now before us on appeal.

Regarding the false statements on her B-2 visa application, the Applicant claims that a friend completed part of her B-2 visa application for her, and it is those sections of the application that contained the false statements. The Applicant claims that she did not see the false information that the friend put on the form when she submitted the application. Under *Matter of Valdez*, 27 I&N Dec. 496 (BIA 2018), a signature on an immigration application establishes a strong presumption that the

applicant knows of and has assented to the contents of the application. The Applicant has not overcome this presumption with her statement denying culpability. Further, the Applicant concedes that she confirmed the misrepresentations on the visa application form to a consular officer during the B-2 visa interview. She said she confirmed what was on the form during the interview because she thought it would be worse to admit the truth at that point. Even if we were to accept the Applicant's claim about the false statements on her visa application, she nonetheless conceded that she confirmed these material misrepresentations in her visa application interview. Therefore, we agree that the Applicant willfully misrepresented material facts to a U.S. Government official in order to obtain a nonimmigrant visa.

III. WAIVER OF INADMISSIBILITY

The Applicant submitted documentation with her Form I-601 to establish that her U.S. citizen spouse would endure extreme hardship if they separated and he remained in the United States or if they relocated together. The record does not include a statement from the U.S. citizen spouse concerning whether he intended to relocate with the Applicant or remain in the United States if the waiver is not granted (and and whether their child would remain with him or the Applicant). Instead, both scenarios are addressed as possible options. Without a statement of intent, the Applicant must establish that her U.S. citizen spouse would experience extreme hardship both upon separation and relocation.

The Director's decision denying the waiver application concluded that the hardships to the Applicant's U.S. citizen spouse would not be atypical or extreme when considered individually or in the aggregate.

On appeal, the Applicant states that the Director claimed to apply an "extreme hardship" standard but actually applied an "exceptional and extremely unusual hardship" standard to the facts of this case. Specifically, the Applicant claims that the Director did not recognize certain factors described at 9 *USCIS Policy Manual* B.5, https://www.uscis.gov/policymanual, as being significant for an extreme hardship analysis. We disagree. Even if the Director did not addressone or more factors discussed in the *USCIS Policy Manual*, this does not mean that the Director's applied a different standard to the facts of the case. The Applicant did not establish that the Director applied the wrong standard in the decision denying the waiver.

The Applicant also claims that the Director incorrectly disregarded evidence of hardships that she would potentially encounter if she were to relocate to Togo. The Director correctly stated that the Applicant must establish that her U.S. citizen spouse would endure the extreme hardship, and that any hardship to the Applicant is not directly material to this waiver application. Since the Applicant did not establish that her anticipated hardship would indirectly cause extreme hardship to her U.S. citizen spouse, the Director did not err in not addressing hardship to the Applicant.

As evidence of extreme hardship, the record includes information about the Applicant's U.S. citizen spouse's employment, ongoing graduate studies, finances, and family ties. Specifically, the Applicant and her U.S. citizen spouse have a young daughter together and the Applicant claims to be the primary caregiver. The U.S. citizen spouse has a son from another relationship who has graduated from high school and plans to start college. The U.S. citizen spouse is gainfully employed by a large medical device manufacturer and works late shifts as well as weekends. He is also pursuing a master's degree.

The U.S. citizen spouse is also reservist with the U.S. Navy, which carries with it additional obligations, including occasional international travel.[1]

If the U.S. citizen spouse remains in the United States with their infant child while the Applicant relocates to Togo, the Applicant claims that her spouse's work schedule would make it impossible for them to find appropriate child care. If the U.S. citizen spouse becomes the primary caregiver, the Applicant claims her spouse would no longer be able to pursue his master's degree or fulfill his U.S. Navy Reserve obligations, he would suffer psychological and emotional harm, and travel to and from Togo would be expensive. There would also be the impact of separating their child from the Applicant. If the U.S. citizen spouse relocated to Togo, the Applicant claims that he would be unable to repay his student loan debt, he would experience hardship due to higher crime rates there and separation from his son from a prior marriage.

We recognize the importance of family unity and the ability of parents and caregivers to provide for the welfare of children. A primary caretaker's inadmissibility can result in a shift of caregiving responsibility to the qualifying U.S. citizen relative, which may, in turn, affect the qualifying relative's ability to earn income for the family. However, after review of the evidence submitted with the waiver application and on appeal, we will affirm the Director's the decision. The record does not establish extreme hardship in all scenarios. Specifically, the record does not show that the qualifying relative would suffer extreme hardship if he remained in the United States and the Applicant and their daughter relocated to Togo. In that scenario, the U.S. citizen spouse would be able to continue his employment, graduate studies, and U.S. Navy Reserve responsibilities. He would not be required take over the role of primary caregiver or have to obtain child care. The record also does not sufficiently document the anticipated nature and severity of any psychological and emotional harm that the Applicant claims her U.S. citizen spouse would suffer upon separation.

In short, we find that the record does not establish extreme hardship to the U.S. citizen spouse if the Applicant and their daughter relocated to Togo.

IV. CONCLUSION

The Applicant is inadmissible because she willfully misrepresented material facts to U.S. Government officials in order to obtain an immigration benefit. The evidence in the record of proceeding, considered both individually and cumulatively, does not establish that the Applicant's U.S. citizen spouse would experience hardship beyond the common hardship endured by a family when USCIS does not waive inadmissibility. Therefore the Applicant has not met the burden of proving that she is eligible for a waiver of inadmissibility and the Director's decision denying the application is affirmed.

ORDER: The appeal is dismissed.

[1] The USCIS *Policy Manual* states that more weight is given to individuals who are an Active Duty member of any branch of the U.S. armed forces, or are in the Selected Reserve of the Ready Reserve. *See* 9 *USCIS Policy Manual* B.5(E), https://www.uscis.gov/policymanual.