U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21655199

Date: JUL. 25, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The Director of the Los Angeles County, California Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (Form I-601), concluding that the record did not establish that the Applicant's lawful permanent resident parents, the only qualifying relatives, would experience extreme hardship if the waiver under section 212(i) of the Act was not granted. We dismissed the Applicant's appeal and a subsequent motion to reconsider. The matter is now before us on a combined motion to reopen and motion to reconsider.

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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the combined motion.

I. LAW

A motion to reconsider must establish that the Director's decision was based on an incorrect application of law or policy to the prior decision 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). A motion to reopen must state new facts supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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, 8 U.S.C. § 1182(a)(6)(C)(i). A discretionary waiver of this ground of inadmissibility may be granted if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act. If the noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

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

On this motion to reconsider, the Applicant again contends that our previous dismissal was in error because he is not inadmissible to the United States under section 212(a)(6)(C)(i) of the Act and that, in the alternative, he has established his eligibility for the waiver under section 212(i) based on a claim of extreme hardship to his lawful permanent resident parents if the waiver is denied. With the motion to reopen, the Applicant now submits a new personal statement and a copy of a letter referenced in our previous decision.

A. Inadmissibility for Willful Misrepresentation of a Material Fact

As discussed in our previous decisions, incorporated here by reference, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for filing a Form I-485, Application to Adjust Status (adjustment application), in 2004, containing material misrepresentations about his date and manner of entry, and for submitting a fraudulent Form I-94, Arrival/Departure Record, in support. As we explained, the adjustment application was based on his claimed marriage to a U.S. citizen who he later admitted to never having met or marrying. The Applicant also filed an application for, and received, employment authorization based on the fraudulent adjustment application, and he signed both applications attesting that their contents and supporting evidence were true and correct. We concluded that the Applicant's signature on these applications "establishes a strong presumption" that he knew and assented to the contents. *Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018). In our prior decision on appeal, we acknowledged that this presumption may be rebutted through evidence that an applicant was misled and deceived by their representative when preparing the application. *Id.* However, we determined that the Applicant had not submitted any evidence to support his claim that he was misled by the unidentified individual who he alleged prepared the applications or that he otherwise made the misrepresentations unknowingly.

In dismissing the Applicant's subsequent motion to reconsider, we determined that he had still not addressed the evidentiary deficiency with new evidence on motion. We additionally noted the arguments by counsel on motion with respect to the Applicant's claim that he had been misled by the preparer, but we concluded that these arguments appeared to introduce an additional inconsistency with his previous statement in the record. Specifically, we observed that counsel for the Applicant argued that the Applicant purposely did not attend a 2005 USCIS interview for his 2004 marriage-based adjustment application after learning that it contained false information. This conflicted with

previous statements from the Applicant indicating that he failed to attend this interview because he was unaware it had been scheduled and, moreover, that he had been unaware of any misrepresentations in his application until 2018. We also noted a June 2004 letter from the Applicant inquiring about an appointment for his employment authorization, with copies of his signed adjustment and employment applications attached, which appeared to indicate that he had been aware of the contents of the applications at that time. Finally, contrary to the Applicant's assertion on motion, we concluded that his misrepresentations were material for purposes of establishing his inadmissibility under section 212(a)(6)(C)(i) of the Act. Accordingly, we upheld our prior finding that the Applicant was inadmissible under section 212(6)(C)(i) of the Act because he had willfully made material misrepresentations on his adjustment and employment authorization applications.

In the instant combined motion, the Applicant contends that he has established that he is not inadmissible under section 212(6)(C)(i) of the Act and argues that we had no substantive evidence to impeach his explanations for the false statements in the record. He renews claims that he had no knowledge of the fraudulent 2004 adjustment application and asserts that contrary to our previous findings, he already submitted evidence to support this claim, specifically his 2018 statement in separate proceedings in which he stated that he failed to appear for the 2005 adjustment interview because he lacked notice of the interview. He notes that it was his counsel, and not the Applicant, who erroneously asserted in the previous motion brief that he did not go to the interview because he had learned of the fraudulent adjustment filing. The Applicant asserts that we erred in attributing to him the assertions of his counsel set forth in the previous motion to conclude that the Applicant made inconsistent statements about why he did not attend his 2005 interview. The Applicant also asserts that we erroneously relied on the 2004 written inquiry to USCIS and attached adjustment and employment application copies to find that it was reasonable to conclude he was in fact aware of the contents of those applications. He contends that he did not send this inquiry himself and, in support of this contention, notes that the inquiry letter was typed and lacked his signature.

To the extent that our previous motion decision attributed to the Applicant an inconsistent assertion made by counsel as to the Applicant's reasons for not attending his 2004 USCIS interview, we withdraw that characterization of counsel's assertions. Nevertheless, as we noted in our previous decision on motion, regardless of the Applicant's reasons for not attending the interview, he did not submit sufficient supporting evidence, including his own statement in these Form I-601 proceedings, to address and overcome the derogatory information in the record indicating that he made material representations on his 2004 adjustment and employment applications for the purpose of procuring a benefit under the Act, rendering him inadmissible. In the current motion, the Applicant, who bears the burden to establish eligibility, has not established any factual or legal error in this determination and has not otherwise rebutted the evidence of his inadmissibility to the United States in these proceedings. *See* Section 291 of the Act (stating that the Applicant bear the burden to establish eligibility for the requested relief); *Matter of Chawathe*, 25 I&N Dec. at 375 (same); *see also Matter of Bett*, 26 I&N Dec. 437, 440 (BIA 2014) ("an applicant has the burden to show that he is clearly and beyond doubt entitled to be admitted to the United States and is not inadmissible under section 212(a) of the Act") (citations omitted). Although the Applicant asserts that we did not consider his 2018 statement explaining that he was unaware of the fraudulent adjustment applications at the time of his 2005 interview, our previous decision on motion specifically noted that the statement was inconsistent with his own counsel's assertions on that motion. Regardless, the statement only generally states that an unnamed preparer who was helping him apply for a "green card" gave him blank or partially filled

out papers but otherwise provides no probative details to support his claim that the preparer misled him into filing fraudulent applications. With the instant motion, the Applicant now submits a new statement providing additional details about his recollection of the events surrounding his applications. However, while the Applicant again asserts that he did not see his completed application forms, he does not explain how the preparer misled or deceived him such that he did not willfully misrepresent himself. Indeed, his statements acknowledge that he signed blank and partially completed forms, indicating that he assented to the contents prepared and submitted by the preparer on his behalf. Accordingly, this new statement is insufficient establish that the fraudulent filing of his adjustment and employment applications were due to misleading or deceptive actions on the part of the preparer, and therefore it does not overcome the presumption that arose when he signed the applications that he knew and assented to the contents therein. *Matter of Valdez*, 27 I&N Dec. at 499.

Consequently, the Applicant has not established that we incorrectly applied the law or USCIS policy in our previous determination concluding that he is inadmissible under section 212(a)(6)(C)(i) of the Act or that our determination was incorrect based on the record at the time, and he has also not presented any new facts supported by documentary evidence that overcome our finding.

B. Extreme Hardship for Purposes of a Section 212(i) Waiver

As the Applicant has not established any error in our prior decisions that he is inadmissible for willful misrepresentation of a material fact, we will next address our previous determinations that he had not established eligibility for a waiver of his inadmissibility pursuant to section 212(i) of the Act.

We determined in our initial decision on appeal that the Applicant had not established eligibility for a section 212(i) waiver because he had not demonstrated that his lawful permanent resident parents would suffer extreme hardship in the event he was refused admission, as required.[1] In our dismissal of the Applicant's subsequent motion to reconsider, we concluded that the Applicant had not addressed how we erred as a matter of law or USCIS policy in finding that the brief statements submitted by the Applicant, his mother, and his adult siblings were insufficient to meet his burden to demonstrate that his parents would experience extreme hardship upon separation. We reiterated our finding on appeal that the record lacked evidence demonstrating the extent of the Applicant's parents' asserted reliance on him for financial, medical, and emotional support, as well as evidence demonstrating that his other family members in the United States would be unwilling or unable to offer similar support if his waiver is denied.

In the instant motion, the Applicant contends that we failed to consider the extreme emotional hardship his elderly parents would experience if they are separated from their grandchildren, the Applicant's three minor children. The Applicant argues that this threatened separation exceeds hardship that which is usual or expected per *Matter of Pilch*, 21 I&N Dec.at 630-31, given his parents' age and their status as grandparents, as he indicates in his new statement. Finally, the Applicant claims that our motion

[1] As the record did not contain a statement from the Applicant's parents indicating whether they intend to remain in the United States or relocate to Mexico if the Applicant's waiver application is denied, the Applicant must establish that if he is denied admission, his qualifying relatives would experience extreme hardship both upon separation and relocation. As the Applicant did not establish extreme hardship upon separation, we did not reach the issue of hardship upon relocation in our previous decisions.

dismissal should have compared the wealth and prosperity of the family in *Matter of Pilch* in the United States to that of the Applicant's parents who lacked the same financial prosperity. *Id.*

Although we do not diminish the hardship to the Applicant's parents if they are separated from their minor grandchildren, the Applicant does not further explain on motion how their age and status as grandparents, or the age of the grandchildren, will result in hardship upon separation that exceeds the common results of deportation or separation due to inadmissibility. Likewise, the Applicant has not cited to relevant evidence in the record supporting his contention that his parents' financial hardships would exceed the usual or expected results of separation, as described in *Matter of Pilch*. Finally, although the Applicant submits a new statement with this motion, he has not presented new facts or any other evidence establishing extreme hardship to his parents. He therefore has not overcome our prior determination that the record did not sufficiently establish the requisite extreme hardship to his parents upon separation if he is refused admission, as required to establish eligibility for a waiver under section 212(i) of the Act.

III. CONCLUSION

On motion, the Applicant has not established any legal or factual error in, or presented any new evidence or facts overcoming, our previous determination that he is inadmissible under section 212(a)(6)(C)(i) of the Act and that he has not established eligibility for a waiver of his inadmissibility pursuant to section 212(i) of the Act. Accordingly, we will dismiss the combined motion.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.