U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20658857

Date: JUN. 13, 2022

Appeal of Charlotte, North Carolina Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Liberia, 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 Charlotte, North Carolina Field Office denied the application, concluding that the record did not establish that the Applicant has a qualifying relative upon which he can base his waiver. On appeal, the Applicant submits a letter and additional evidence and asserts that the refusal of the immigration benefit he is seeking will cause extreme hardship to his family.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary 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 noncitizen. Section 212(i) of the Act.

II. ANALYSIS

The issue on appeal is whether the Applicant has demonstrated that he has a qualifying relative upon which he can base a waiver application under section 212(i) of the Act. On appeal, the Applicant does not contest his inadmissibility under section 212(a)(6)(C)(i) of the Act.

In September 2015, the Applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, concurrently with a Form I-130, Petition for Alien Relative, submitted by his spouse on his behalf. The Director denied the Form I-130 concluding that the Applicant and his spouse did not submit sufficient evidence to demonstrate that they had a bona fide marriage and also denied the Form I-485 because the Applicant had not established eligibility to adjust status.

In March 2020, the Applicant filed a second Form I-485 (second adjustment application) with a divorce decree indicating that the Applicant and his spouse were divorced in [redacted] 2019. The divorce decree also noted that the Applicant and his spouse were separated since [redacted] 2014, which was also the date of their marriage. In August 2021, the Director issued a notice of intent to deny informing the Applicant that he was inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresenting his marital status during the adjustment interview that was conducted in August 2016, and that he needed to submit the Form I-601 to seek a waiver. In response, the Applicant submitted a Form I-601 waiver application and additional evidence, including an amended divorce decree indicating that the parties were separated in May 2016, not [redacted] 2014. In October 2021, the Director denied the Applicant's waiver application concluding that the Applicant failed to demonstrate that he has a qualifying relative and therefore has not established that his qualifying relative would suffer extreme hardship.[1] On the same day, the Director denied the Applicant's second adjustment application concluding that he was inadmissible.

On appeal, the Applicant submits a U.S. birth certificate of his daughter who was born in [redacted] 2018, and states that his family, especially his daughter would suffer extreme hardship if his immigration benefit were denied. However, a child is not a qualifying relative under section 212(i) of the Act. Section 212(i) waiver requires a showing of extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Here, the record does not contain evidence demonstrating the Applicant has a parent or a spouse who is a U.S. citizen or a permanent resident of the United States. As such, the Applicant has not shown he has a qualifying relative to waive inadmissibility under section 212(i) of the Act, and the application will remain denied.

ORDER: The appeal is dismissed.

[1] In the decision, the Director erroneously lists "child" as one of the qualifying relatives in this case to establish extreme hardship under section 212(i) of the Act. Extreme hardship to a child is limited to a VAWA self-petitioner under section 212(i) of the Act but the record does not establish that the Applicant is a VAWA self-petitioner. Alternatively, the Applicant may show hardship to a qualifying relative, as a result of hardship to non-qualifying relatives, such as a child, but here, the Applicant does not have a qualifying relative.