U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20036050

Date: MAR. 31, 2022

Appeal of Minneapolis-St. Paul Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant was found 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 willfully misrepresenting material fact. He seeks a waiver of inadmissibility under section 212(i) of the Act to adjust status to that of a lawful permanent resident in the United States.

The Director of the Minneapolis-St. Paul Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's qualifying relative, his U.S. citizen spouse, would experience extreme hardship if he were denied the waiver. The matter is now before us on appeal. On appeal, the Applicant contends the Director's erred because she did not evaluate if his qualifying relative spouse would suffer extreme hardship in the event his spouse relocates with him to Sri Lanka.

The Applicant bears the burden of proof to establish eligibility for the requested benefit 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). Upon our de novo review, as explained below, we will dismiss the appeal as moot.

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 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.

In making a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act, there must be evidence in the record showing that a reasonable person would find that an applicant used fraud or that he or she willfully misrepresented a material fact in an attempt to obtain a visa, other documentation, admission into the United States, or any other immigration benefit. See 8 USCIS Policy Manual J.3(A)(1), https://www.uscis.gov/policy-manual. Fraud consists of "false representations of a material

fact made with knowledge of its falsity and with intent to deceive the other party. Furthermore, the false representation must be believed and acted upon by the party deceived to his disadvantage." Matter of G-G-, 7 I&N Dec. 161, 164 (BIA 1956). 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). For a misrepresentation to be found willful, it must be determined that the applicant was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. Matter of G-G-, 7 I&N Dec. 161 (BIA 1956). The misrepresentation must be made with knowledge of its falsity. Id. at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we "closely scrutinize the factual basis" of a finding of inadmissibility for fraud or misrepresentation because such a finding "perpetually bars an alien from admission." Matter of Y-G-, 20 I&N Dec. 794, 796-97 (BIA 1994); Matter of Tijam, 22 I&N Dec. 408, 425 (BIA 1998); Matter of Healy and Goodchild, 17 I&N Dec. 22, 28-29 (BIA 1979).

In addition, any noncitizen convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (CIMT), other than a purely political offense, or an attempt or conspiracy to commit such a crime, is inadmissible. Section 212(a)(2)(A)(i) of the Act.

Two provisions of the North Dakota Century Code are relevant to this proceeding. The first is N.D. Cent. Code Ann. §12.1-41-06 (West 2017), which stated the following at the time of the Petitioner's conviction:

> § 12.1-41-06. Patronizing a minor for commercial sexual activity
>
> (1) A person who, in committing a battery, intentionally or knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated battery.
>
> [...]
>
> b. The person gives, agrees to give, or offers to give anything of value to a minor or another person so that an individual may engage in commercial sexual activity with a minor.

Also relevant is N.D. Cent. Code Ann. § 14-10-06(1) (West 2017), which stated the following:

> § 14-10-06. Unlawful to encourage or contribute to the deprivation or delinquency of minor--Penalty
>
> (1) Any individual who by any act willfully encourages, causes, or contributes to the delinquency or deprivation of any minor is guilty of a class A misdemeanor.

II. ANALYSIS

The issue on appeal is whether the Applicant is eligible for a waiver of his inadmissibility for fraud or willfully misrepresenting a material fact. However, prior to analyzing if he qualifies for a waiver, we must determine if the Applicant is inadmissible.

The Applicant was arrested and charged in 2017 with patronizing a minor for sexual activity under N.D. Cent. Code Ann. § 12.1-41-06(1)(b). Later, this charge was amended to a violation of N.D. Cent. Code Ann. § 14-10-06(1): "unlawful to encourage or contribute to the deprivation or delinquency of minor" (contributing to the delinquency of a minor). The Applicant pled guilty to contributing to the delinquency of a minor, and was sentenced to 360 days in jail, which was suspended for 360 days of unsupervised probation, fines, and fees.

In February 2020, the Applicant was interviewed by an immigration officer regarding the circumstances of his 2017 arrest. During that interview, the Applicant stated his intent in going the hotel was to prove he was being scammed by an individual. However, the Director found the Applicant's explanation of the events was not consistent with the arrest report, which stated he went to the hotel with the intention of having sex with an underage female. The Director opined that the Applicant's intent during his arrest was material toward determining whether the Applicant admitted to committing the essential elements of patronizing a minor for sexual activity, a CIMT. The Director concluded that the Applicant's answer during the interview cut off a line of inquiry regarding his charge of patronizing a minor for sexual activity and being inadmissible for a CIMT and that therefore, the Applicant was inadmissible for fraud or willfully misrepresenting a material fact.

Before addressing the Applicant's fraud and misrepresentation inadmissibility, we first look to see if the Applicant's conviction, contributing to the delinquency of a minor under N.D. Cent. Code Ann. § 14-10-06(1), was a CIMT.[1] The Director found it was not a CIMT and the record does not establish that this finding was in error.

Regarding the Applicant's arrest for patronizing a minor for sexual activity, the record does not establish the Applicant was: (1) convicted; or (2) admitted to committing this crime. In order for the admission of a crime to be properly used as a basis for inadmissibility, three conditions must be met: (1) the admitted acts must constitute the essential elements of a crime in the jurisdiction in which they occurred; (2) the respondent must have been provided with the definition and essential elements of the crime, in understandable terms, prior to making the admission; and (3) the admission must have been voluntary. Matter of K-, 7 I&N Dec. 594, 597 (BIA 1957); see also Matter of G-M-, 7 I&N Dec. 40, 70 (BIA 1955). Here, the police arrest report and the statements made by the Applicant during his adjustment of status interview do not establish the Applicant was provided the definition and the elements for patronizing a minor for sexual activity or that he made a voluntary admission of this crime that would render him inadmissible for a CIMT under section 212(a)(2)(A)(i) of the Act.

[1] In determining whether a crime involved moral turpitude, we consider whether the act was accompanied by a vicious motive or corrupt mind. Matter of Perez-Contreras, 20 I&N Dec. 615, 618 (BIA 1992). Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. Id. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere. Id.

The Director's conclusion that the Applicant is inadmissible for fraud and willful misrepresentation was reached in error. A willful misrepresentation may only serve as a basis for inadmissibility under section 212(a)(6)(C)(i) of the Act if the applicant would have been inadmissible or if the misrepresentation cuts off a line of inquiry, which is relevant to the applicant's eligibility and which might have resulted in a proper determination that he or she is inadmissible. See 8 USCIS Policy Manual J.3(E)(2), https://www.uscis.gov/policy-manual.. In the instant case, the Applicant was not convicted and did not admit to patronizing a minor for sexual activity. His arrest for this charge does not serve a basis for inadmissibility. Therefore, the Applicant's statements about his intent during his interview did not cut off a line of inquiry as they were not material to his admissibility. Moreover, the Applicant was only convicted of contributing to the delinquency of a minor under N.D. Cent. Code Ann. § 14-10-06(1), and it is not permissible to look behind the conviction to the underlying conduct in determining his admissibility.

Based on the foregoing, the record does not support the conclusion that the Applicant made a material misrepresentation or cut off a material line of inquiry. The record as presently constituted does not contain sufficient evidence to support the Director's finding that the Applicant committed fraud and willful misrepresentation to be found inadmissibility under section 212(a)(6)(C)(i) of the Act.

III. CONCLUSION

In that the Applicant has not been found inadmissible, the waiver application is unnecessary. Accordingly, the appeal will be dismissed as moot.

ORDER: The appeal is dismissed.