U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15760226

Date: MAY 26, 2022

Appeal of Denver, Colorado Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for adjustment of status and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Denver Field Office in Centennial, Colorado denied the Form I-601, Application to Waive Inadmissibility Grounds (Form I-601), to waive the Applicant's inadmissibility, concluding that she had not established extreme hardship to her U.S. citizen spouse, her only qualifying relative, as required to demonstrate eligibility for the discretionary waiver under section 212(i) of the Act. On appeal, the Applicant submits new evidence and asserts her eligibility for the waiver.

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). 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 remand the matter to the Director for further proceedings consistent with our decision here.

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. 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

The record establishes that the Applicant is a citizen of Ukraine, born in in the Crimea region, and holds a Russian passport in addition to a Ukrainian passport. She entered the United States in December 2018 as a K-1 nonimmigrant fiancée. The Director determined the Applicant was inadmissible under section 212(a)(6)(c)(i) of the Act for fraud or willful misrepresentation of a material fact, and the Applicant, who is seeking adjustment of status, therefore filed this Form I-601 to waive her inadmissibility. With the Form I-601, the Applicant submitted supporting affidavits, identity documents for herself and her family members, financial documents, and country of origin information. These submissions include a statement by her spouse regarding the inadmissibility finding under section 212(a)(6)(c)(i) of the Act and his claim that he would suffer the extreme hardship if the Applicant is denied admission.

In denying the Form I-601, the Director determined that the Applicant was not eligible for a waiver under section 212(i) of the Act because she had not established extreme hardship to her U.S. citizen spouse either in the event of his relocation to Crimea with the Applicant or his separation from her. The Director acknowledged, among other hardship factors, the country conditions information in the record regarding the Russian occupation of Crimea and evidence that the Applicant's spouse had previously received refugee status when immigrating from Russia and continues to fear persecution in Russia and Crimea.[1] However, the Director found that the evidence did not establish that the spouse would have to relocate with the Applicant to Crimea or Russia, as the Applicant possessed a Ukrainian passport and could instead relocate with her spouse to Ukraine. The Director further concluded that the remaining evidence of hardships to the spouse upon relocation in the record, including: his past depression, anxiety, and post-traumatic stress disorder; lack of family connections in Russia outside of Crimea; separation from his minor children in the United States from a previous relationship; and lack of economic opportunities in Crimea, were not sufficient to establish extreme hardship. The Director also noted that the Applicant's spouse's statement detailed hardships he would suffer upon separation from the Applicant in the event he remained in the United States without her, but nevertheless determined that they too were insufficient to establish extreme hardship to the Applicant's spouse in that scenario.

On appeal, the Applicant submits: updated country of origin information for Ukraine and Russia, including the March 2022 U.S. Department of State (DOS) travel warnings for Ukraine and the March 2022 announcement by the Department of Homeland Security designating Ukraine for Temporary

[1] Crimea is a contested region in Ukraine that was occupied and annexed by Russia in 2014. The United States and Ukraine do not recognize Russia's purported annexation of Crimea and instead consider it to be Ukrainian territory. *See* U.S. Department of State, *Russia Travel Advisory*, https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/russia-travel-advisory.html (last visited May 26, 2022).

Protected Status (TPS); copies of AAO non-precedent decisions; evidence of the Applicant's daughter's lawful permanent residence; and copies of e-mails the Applicant exchanged with the travel agency that she asserts assisted her in preparing her January 2018 nonimmigrant visa application for a B1/B2 tourist visa.

The issues on appeal are whether the Applicant is inadmissible for fraud or willful misrepresentation of a material fact and if so, whether she has demonstrated that her U.S. citizen spouse would suffer extreme hardship if the Applicant is refused admission, as required for a waiver under section 212(i) of the Act.

A. Inadmissibility

The Director determined that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for falsely stating that she was married on her nonimmigrant visa application for a tourist visa in January 2018 when she had never been married at the time.[2] The Director determined that the false statement on the application constituted a misrepresentation of a material fact, as it established ties to her home country that did not exist and shut of a line of inquiry that was relevant to her eligibility for a nonimmigrant visa.

The Applicant renews on appeal her claim that she is not inadmissible because she did not commit fraud or willfully misrepresent a material fact. Counsel for the Applicant asserts that when the Applicant told the travel agency that assisted her with the visa application that she had previously lived with the father of her young daughter, they advised her to indicate that she was married on her visa application because "this would constitute a common law marriage" in the United States. Counsel therefore maintains that the Applicant did not make a willful representation but rather a statement made from her "honest belief" that the concept of common law marriage applied to her cohabitation with her daughter's father. On appeal, the Applicant also submits her 2018 email correspondence with the travel agency and an attached U.S. visa questionnaire in which her marital status is reflected as single.

To be issued a nonimmigrant visa to the United States, foreign nationals must overcome the statutory presumption found in section 214(b) of the Act, 8 U.S.C. § 1184(b), that they are intending immigrants. Therefore, in seeking nonimmigrant admission to the United States, a visa applicant must establish to the satisfaction of a DOS consular officer that they have no intention of abandoning their foreign residence. *See* 9 *Foreign Affairs Manual* 401.1-3(E), https://fam.state.gov/FAM/09FAM/09FAM040101.html. In doing so, an applicant must demonstrate, among other factors, close family ties in the country of origin. *Id.*

A misrepresentation is "material" if 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 their eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-*, 27 I&N Dec. 105, 113 (BIA 2017). The applicant has the burden to demonstrate that any line of inquiry shut off by the misrepresentation was irrelevant to the original eligibility determination. *See* 8 *USCIS*

[2] The record indicates that the Applicant married her current spouse in the United States in [redacted] 2019, the year after she filed the nonimmigrant visa application referenced here.

Policy Manual J.3(E)(4), https://www.uscis.gov/policymanual. The term "willful" does not require a specific intent to deceive, but requires knowledge of falsity, as opposed an accidental statement or one that is made because of an honest mistake. *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); 8 *USCIS Policy Manual, supra* at J.3(D).

Here, the record supports the Director's determination of the Applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act. The evidence indicates that the Applicant represented herself as married to the father of her first child on her 2018 nonimmigrant visa application although she had never been legally married to him in Ukraine or anywhere else. Indeed, the Applicant submitted a certificate attesting to "the absence of the fact of state registration of civil act" from the City of [redacted] where the Applicant was born, indicating that she had never been married there. The record also reflects that she signed the visa application, attesting to the truth of its contents. Further, as the Director noted, her assertion that she was married is material as it shut off a line of inquiry directly related to her eligibility for a nonimmigrant tourist visa in that it falsely represented her family ties in Ukraine to overcome the presumption under section 214(b) of the Act that she was an intending immigrant and render her eligible for a nonimmigrant visa. *See Matter of D-R-*, 27 I&N Dec. at 113.

While counsel asserts on appeal that the Applicant misunderstood the concept of common law marriage and made the false statement from her "honest belief" that her cohabitation with the father of her child constituted a common law marriage, assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. Here, the Applicant did not submit a statement in support of her Form I-601 to address or explain the false statement she made on her 2018 visa application. However, the record does include her 2019 signed sworn statement taken at the time of her USCIS interview for her Form I-485, Application to Register Permanent Residence or Adjust Status. According to this sworn statement, the Applicant testified under oath that she indicated she was married on her 2018 visa application because after she told the travel agency that she was "living [in] common law with" the father of her child, the agency advised her that she could indicate "anyone even a boyfriend [she] was living with" in response to the question on the visa application about her "family status". During that same interview, the Applicant inconsistently testified that in her native country, a "common law [marriage] is not considered to be officially married" and that she was in fact never married to her daughter's father. The record before us on appeal does not include a statement from the Applicant explaining why told the travel agency that she was living in "common law" and why she followed the advice of the travel agency to represent her marital status as married on the visa application when she knew that she was not in a valid common law marriage in Ukraine at the time. Significantly, the Applicant did not assert in her sworn statement, or in a statement in these proceedings that the travel agency told her or otherwise misled her into believing that her relationship or cohabitation with the father of her child at the time was a common law marriage in the United States, as counsel asserts on appeal. Consequently, the record does not support counsel's assertions that the Applicant considered herself to be in a valid common law marriage at the time she indicated she was married on her visa application.

We acknowledge the Applicant's 2018 email correspondence with a travel agency and the attached "Questionnaire for US Visa" with her purported responses for questions on the nonimmigrant visa application, including a notation indicating her marital status as "Not married". However, they are

insufficient to support counsel's assertion that the Applicant told the travel agency that she was unmarried and was misled by the agency into misrepresenting her marital status on her visa application, particularly in the absence of probative testimony from the Applicant herself. Further, as the Director correctly noted, the Applicant signed the visa application, and consequently, there is a strong presumption that she knows and assented to the contents of that application. *Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018). Although the Applicant may rebut this presumption by demonstrating "fraud, deceit, or other wrongful acts" by another party, she has not done so here. *Id.* As stated, and contrary to counsel's assertions, the Applicant's testimony in her 2019 sworn statement indicates she knew that common law marriage was not a valid marriage in her home country and nevertheless stated on her visa application that she was married because the travel agency told her she "could put anyone" down with respect to her marital or family status. The Applicant has not provided a statement before the Director or on appeal providing a more detailed explanation or asserting that the travel agency intentionally deceived her about the legal status of her relationship with her child's father at the time or otherwise engaged in deceit, fraud, or other wrongful acts. Furthermore, directly contradicting her assertion in these proceedings that a travel agency assisted her in preparing her visa application, our review of that application indicates the Applicant answered "no" to the question about whether anyone assisted her "in filling out this application".[3] Accordingly, we find no error in the Director's determination that the record demonstrates that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and requires a section 212(i) waiver of inadmissibility.

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

As stated, in order to establish eligibility for a waiver under section 212(i) of the Act, the Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or relatives, in this case her U.S. citizen spouse. Section 212(i) of the Act. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant or 2) if the qualifying relative relocates overseas with the applicant. Demonstrating extreme hardship under both scenarios is not required if an applicant's evidence establishes that one of these scenarios would result from the denial of the waiver. The Applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the Applicant, or would remain in the United States, if the Applicant is denied admission. 9 *USCIS Policy Manual, supra,* at B.4(B). In the present case, the Applicant's spouse asserted in his statement before the Director that he would experience extreme hardship upon relocation or separation from the Applicant, and the Director therefore assessed extreme

[3] We have also considered the statement of the Applicant's spouse, asserting that the Applicant had no intention to deceive the U.S. government on her 2018 visa application and that she corrected herself as soon as she realized the error. We note that an applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act if they timely and voluntarily retract the fraud or misrepresentation. *See Matter of M-*, 9 I&N Dec. 118, 119 (BIA 1960) (holding that attempted fraud must be corrected "voluntarily and prior to any exposure"); *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (holding that where an alleged retraction "was not made until it appeared that the disclosure of the falsity of the statements was imminent [, it] is evident that the recantation was neither voluntary nor timely"). The USCIS Policy Manual further states that for a retraction to be effective, an applicant must correct their representation before being exposed by the officer or U.S. government official or before the conclusion of the proceeding during which they gave false testimony. 8 *USCIS Policy Manual, supra*, at J.3(D)(6). Our review indicates that the Applicant did not disclose the false statement regarding her marital status on her 2018 visa application at her consular interview for that application and only disclosed it in connection with her subsequent K-1 fiancée application, which required her to establish she was unmarried and eligible to marry her then fiancé (now her spouse) in the event that visa was issued.

hardship under both scenarios. However, in his statement, the Applicant's spouse expressly stated that he intends to relocate with the Applicant if the latter is denied admission, specifically to Crimea, the region in which the Applicant was born and which she contends is dangerous due to civil unrest. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship upon relocation.

The Director acknowledged the evidence of hardship to the Applicant's spouse upon relocation to Crimea but concluded that the Applicant had not established extreme hardship to her spouse in the event of relocation because she did not establish that the spouse would have to necessarily relocate with the Applicant to Crimea or Russia. Instead, the Director determined that the Applicant and her spouse could relocate to Ukraine, her country of citizenship. On appeal, the Applicant submits new evidence regarding the volatile security situation in Ukraine due to the recent Russian military invasion of the country earlier this year, as well the United States' designation of Ukraine for TPS based on "the ongoing armed conflict and the extraordinary and temporary conditions in Ukraine" preventing Ukrainian nationals from returning to Ukraine safely.

Conditions in the country of relocation, including a TPS designation, may be relevant to determining whether an applicant has demonstrated extreme hardship to a qualifying relative.[4] 9 *USCIS Policy Manual, id.* at B.5(D). In cases where a qualifying relative would relocate to a country or region that is the subject of a DOS recommendation against travel, the travel warning would often weigh heavily in support of a finding of extreme hardship, taking into account the nature and severity of such warnings. 9 *USCIS Policy Manual, id.* at B.5(E)(4). In making an extreme hardship determination, in addition to the factors, arguments, and evidence submitted by an applicant, USCIS may also consider factors, arguments, and evidence that an applicant has not specifically presented, such as those addressed in DOS information on country conditions or other U.S. Government determinations regarding country conditions, including a country's designation for TPS. 9 *USCIS Policy Manual, id.* at B.5(A).

Here, we take note of the new evidence submitted by the Applicant as well as the April 2022 DOS travel advisories currently in effect warning U.S. citizens against traveling to Russia and Ukraine due to the armed conflict there.[5]

We acknowledge that eligibility for an immigration benefit ordinarily must exist at the time of filing and at the time of adjudication. *See* 8 CFR § 103.2(b)(1). However, considering the nature of particularly significant factors such as DOS travel warnings, the presence of one or more of these factors impacting eligibility at the time of adjudication should be considered by USCIS even if the circumstance arose after the filing of the waiver request. 9 *USCIS Policy Manual, id.* at B.5(E). In this case, the new evidence on appeal of the recent changes in country conditions in Ukraine, the Applicant's spouse's intended location of relocation, as well as the Applicant's country of citizenship,

[4] Other country conditions that may be relevant include civil unrest or generalized levels of violence, current U.S. military operations in the country, active U.S. economic sanctions against the country, ability of country to address significant crime, environmental catastrophes like flooding or earthquakes, and other socio-economic or political conditions that jeopardize safe repatriation or lead to reasonable fear of physical harm. 9 *USCIS Policy Manual, id.* at B.5(D).

[5] The current DOS travel advisories for Ukraine and Russia are at the highest level ("Do Not Travel"). U.S. Department of State, *Travel Advisories*, https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/ (last visited May 26, 2022).

materially affect the determination of extreme hardship to the spouse and therefore the Applicant's eligibility for a waiver under section 212(i) of the Act, particularly as they directly relate to the Director's conclusion that the Applicant and her spouse were free to relocate to Ukraine, which at the time was not in a state of armed conflict. Accordingly, we will remand the matter to the Director to consider the new evidence in the record in determining whether the Applicant has demonstrated extreme hardship to his qualifying relative and to determine whether she otherwise warrants a waiver of inadmissibility under section 212(i) of the Act as a matter of discretion.

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