U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23033732

Date: NOV. 09, 2022

Appeal of Long Island, New York Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

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

The Director of the Long Island, New York Field Office, denied the application, concluding that the Applicant did not establish extreme hardship to his qualifying relative, if the waiver is denied. On appeal, the Applicant asserts that he is not inadmissible. Alternatively, the Applicant asserts that he has met his burden of demonstrating extreme hardship to his qualifying relative and that he merits a waiver as a matter of discretion.

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, 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 waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or LPR spouse or parent of the noncitizen. If the noncitizen demonstrates the existence of the required hardship, then they must also show that U.S. Citizenship and Immigration Services should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

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 issues on appeal are whether the Applicant is inadmissible for fraud or willful misrepresentation and whether he has demonstrated his U.S. citizen spouse would suffer extreme hardship upon denial of the waiver.

A. Inadmissibility

The Applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for attempting to enter the United States by presenting documents with a false name and date of birth. The Applicant contends he is not inadmissible because he did not present "the fraudulent documents to any U.S. government authority, nor did he provide a false name or other false information to them." On appeal, in a signed affidavit, the Applicant states that during his adjustment interview, he told the immigration services officer that while he boarded the plane with documents in another person's name, when the pilot questioned him about his documents, he told the pilot his correct name and handed his documents to the pilot. He asserts that he never presented incorrect name to any immigration officer and "immediately told them [his] correct name."[1]

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 they 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/policymanual. The applicant has the burden of establishing at least one of the following facts to rebut the finding that a misrepresentation was willful: the misrepresentation was not made to procure a visa, admission, or some other benefit under the Act; there was no false misrepresentation; the false representation was not willful; the false representation was not material; or the false representation was not made to a U.S. government official. If, after assessing all the evidence, the applicant has established none of these facts, then the applicant has not successfully rebutted the inadmissibility finding, and therefore, inadmissible because they have not satisfied the burden of proof. See 8 USCIS Policy Manual J.3(A)(2), https://www.uscis.gov/policymanual.

[1] Depending on the specificity, detail, and credibility of evidence, we may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." See Matter of Acosta, 19 I&N Dec. 211, 218 (BIA 1985). The BIA has also held, however, "[w]e not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." Matter of S-A-, 22 I&N 1328, 1332 (BIA 2000). If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. Matter of Y-B-, 21 I&N Dec. 1136, 1139 (BIA 1998).

Upon review, the record does not support the Applicant's assertions that he did not present fraudulent documents to the U.S. government official to enter the United States and that he immediately revealed his true identity. First, we note that the documents created contemporaneously upon his entry to the United States contain only his false name, [redacted]. For example, the Form I-122, Notice to Applicant for Admission Detained for Hearing Before the Immigration Judge, was issued to the Applicant in the name [redacted] on [redacted] 1991 (the day the Applicant attempted to enter the United States). Also, the documents related to the exclusion proceedings contain only the name [redacted] including the change of venue motions submitted by the Applicant's then-attorney and the Immigration Judge's exclusion decision issued on [redacted] 1991.[2] Furthermore, the record contains a Form I-94, Departure Record, indicating that the Applicant was paroled on [redacted] 1991, pending his exclusion hearing. The Form I-94 was issued to [redacted] with a notation in the reverse side of the form "AKA [redacted]." Notably, neither of the last names on the Form I-94 is the Applicant's true last name. The Applicant has not provided any explanation why these documents were issued to him in names other than his true name if he provided his true identity immediately. There is no evidence that the Applicant revealed his true identity prior to being released from custody.

Moreover, in a 2019 affidavit, the Applicant stated that he arrived in the United States in [redacted] 1991, "using a photo-substituted Pakistani passport in the name of [redacted]" and that he was placed in exclusion proceedings and detained about three months. In this affidavit, the Applicant did not state that the fraudulent documents were presented to the government officials by the pilot or that he revealed his true identity immediately.

In addition, we note that during the Applicant's adjustment interview, when asked what type of visa he used to enter the United States, the Applicant answered, in a written sworn statement, that he used a "green card" to enter the United States in 1991 and the immigration officer confiscated the green card that he presented.

The Applicant has not submitted sufficient evidence to support his claim that he did not provide fraudulent documents to the government officials to obtain admission into the United States and that he provided his true and correct name to the authorities immediately. It is the Applicant's burden to demonstrate eligibility. Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. at 375. Accordingly, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking admission into the United States through fraud or willful misrepresentation and requires a waiver of inadmissibility.

B. Extreme Hardship

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 overseas with the applicant. Demonstrating extreme hardship under both of these scenarios is not required if the

[2] In support of this adjustment application and on appeal, the Applicant submitted a copy of his exclusion decision issued by the Immigration Judge. These copies submitted by the Applicant contain hand-written notations of his name, [redacted] on upper right corner of each page. However, it is unclear who notated this name on the copy of the Immigration Judge's order and when it was notated as the other copy of the Immigration Judge's decision in the record does not contain such notation.

applicant's evidence demonstrates 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 B.4(B), https://www.uscis.gov/policymanual. Here, the Applicant's spouse stated that she is "unable to travel to Pakistan" with the Applicant and "[b]eing forced to leave the United States to remain with my husband is terribly distressing to even think about." She further stated that she does not speak Urdu and "would not be able to survive there." Accordingly, we conclude that the Applicant's spouse suggested that she will not relocate with the Applicant. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship upon separation.

In an affidavit submitted in support of the waiver application before the Director, the Applicant's spouse explained that she is a native of Greece and was adopted by an American family while she was an infant. She stated that at a young age, she was sexually abused by her brother, the biological son of her adopted parents. She further stated that her first husband, with whom she has three children, was also abusive towards her and that she has not been in contact with him or their children. She stated that she has supportive and loving relationship with the Applicant and that they help each other in need. She stated that she "would not be able to survive emotionally if [she] was on [her] own." She stated that she is a pharmacy technician and receives health benefits that enables her to care for her medical conditions.

The Applicant submitted a psychological evaluation of his wife conducted in November 2018. According to the evaluation, the Applicant's spouse "struggled with depression for nearly her entire life" and will experience "severe depression" should she separate from the Applicant. The psychologist stated that "her severe depression carries with it a suicide risk that cannot be ignored." The psychologist "strongly recommended" that she receives individual therapy to address ongoing symptoms of anxiety and depression, and a pharmacotherapy evaluation performed by a psychiatrist to determine whether medication may help improve symptoms of depression. The psychologist also emphasized her medical conditions and stated that she reported receiving specialized treatment of these conditions. On appeal, the Applicant submits copies of 2021 "Summary of Care" reports of his and his spouse's doctor's visit. According to these documents, the Applicant's spouse has a history of hypothyroidism and hypertension and takes medications.

We are sympathetic to the Applicant's spouse's psychological and medical concerns; however, we conclude that if she remains in the United States without the Applicant, the record is insufficient to show that her hardship would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Although we acknowledge that the 2018 psychological evaluation indicates a history of depression, the record does not contain documentation providing insight into the current status of the Applicant's spouse's psychological condition. It is unclear whether she has followed up on the psychologist's recommendations for further evaluation and treatment, whether she has any on-going psychological interventions to assist her with anxiety and depression, and whether such interventions are effective. The record does not show that she has any physical or mental health issues that affect her ability to work or carry out daily activities, or that she requires the Applicant's assistance as a result. Furthermore, the 2021 "Summary of Care" report does not provide information regarding how her medical conditions affect her ability to work or care for herself.

We also acknowledge the Applicant's concerns about his own health issues and that he is unable to work due to stroke and diabetes. However, the Applicant does not provide information regarding how his medical conditions would affect his spouse upon separation. Furthermore, the Applicant stated that the only family he has in Pakistan is his brother. However, in response to a notice of intent to deny from the Director, the Applicant submitted an affidavit in which he admitted to having five adult children who are married and living in Pakistan with their families. The Applicant's inconsistent statements raise questions about his credibility and the hardship claims he makes.

Accordingly, even considering all of the evidence in its totality, the record remains insufficient to show that the Applicant's spouse's claimed psychological hardship would be unique or atypical, rising to the level of extreme hardship, if she remains in the United States while the Applicant returns to live abroad due to his inadmissibility. Therefore, we conclude that the Applicant has not met his burden to demonstrate that his qualifying relative will experience extreme hardship on separation.

Because the Applicant has not demonstrated extreme hardship to a qualifying relative if he is denied admission, we need not consider whether he merits a waiver in the exercise of discretion. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.