U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19479288

Date: SEP. 07, 2022

Appeal of Greer, South Carolina 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 Greer, South Carolina Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (Form I-601), to waive the Applicant's inadmissibility, concluding that he had not established extreme hardship to his U.S. citizen spouse, his only qualifying relative, as required to demonstrate eligibility for the discretionary waiver under section 212(i) of the Act. On appeal, the Applicant asserts his 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 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. 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 Ecuador. 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 his inadmissibility. 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 he had not established extreme hardship to his U.S. citizen spouse. The Director acknowledged, among other hardship factors, the documentation regarding the spouse's mental health concerns and hardship she could experience if the Applicant is denied admission due to her self-employment with the couple's shared businesses. However, the Director found that the evidence did not sufficiently establish that the spouse would experience extreme hardship if the Applicant's waiver is denied.

With the Form I-601, the Applicant submitted supporting personal declarations, identity documents for the spouse and other relatives, a psychological evaluation for his spouse, country of origin information about Ecuador, and financial documents including information about the family's expenses. These submissions include a statement by his spouse regarding the inadmissibility finding under section 212(a)(6)(C)(i) of the Act and the spouse's claim that she would suffer the extreme hardship if the Applicant is denied admission.

On appeal, the Applicant submits a brief and contends that he is not inadmissible for fraud or willful misrepresentation or, in the alternative, that he has established eligibility for the waiver based on extreme hardship to his spouse.

A. Inadmissibility

The record reflects that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresenting his immigrant intent at the time of his admission to the United States on a B-2 nonimmigrant visitor visa in December 2017. As explained by the Director, during a USCIS interview regarding his adjustment of status application in 2020, the Applicant disclosed that at the time of his admission as a nonimmigrant visitor in December 2017, he had already received a job offer in the United States from his current employer, [redacted] and he presented a letter from [redacted] confirming that he worked for the company beginning in Feb 2018, approximately two months after his admission. Consequently, as the Director determined, the record indicates the Applicant had an immigrant intent at the time of his admission but falsely represented himself as a temporary nonimmigrant visitor to the United States in order to gain admission.

The Applicant renews on appeal his claim that he is not inadmissible because he did not commit fraud or willfully misrepresent a material fact to gain admission to the United States. Counsel for the

Applicant contends that he entered the United States in December 2017 as a B-2 visitor for pleasure with the intent to visit his father. The Applicant argues that the employer letter he presented at his adjustment interview indicating that his employment began in February 2018 contained a typographical error in the stated year he commenced employment. He asserts that although he was receiving mentorship and training from [redacted] in February 2018, he was not employed with [redacted] until 2019. Additionally, the Applicant claims that USCIS has not shown clear, unequivocal, and convincing evidence that he materially misrepresented himself.

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 U.S. Department of State (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. An intention to accept employment in the United States is often tied with an intention to remain in the United States for an extended period. 9 *Foreign Affairs Manual, supra* at 401.1-3(B). An applicant expecting to be gainfully employed in the United States may not be classified as a nonimmigrant unless the intended employment is, or may be, authorized under a nonimmigrant classification. *Id.*

A misrepresentation is "material" for purposes of inadmissibility under section 212(a)(6)(C)(i) of the Act 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 Matter of S- and B-C-*, 9 I&N Dec. 436 (A.G. 1961); 8 *USCIS 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 Healy and Goodchild*, 17 I&N Dec. 22 (BIA 1979); *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956), *superseded in part by Matter of Kai Hing Hui,* 15 I&N Dec. 288 (BIA 1975); 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 received a job offer in the United States with his current employer prior to entering the United States, according to his own statement at his adjustment of status interview, and shortly after his admission to the United States, he began working for that employer. The preponderance of the evidence therefore indicates that when he sought admission to the United States in December 2017, the Applicant had an intention to pursue and obtain permanent employment in the United States but falsely represented himself to U.S. immigration officials as having an intent to visit the United States for a temporary period to overcome the presumption under section 214(b) of the Act that he was an intending immigrant in order to gain admission to the United States as a nonimmigrant visitor; therefore the misrepresentation was material as it shut off a line of inquiry directly related to his eligibility for a nonimmigrant visa. *See Matter of D-R-*, 27 I&N Dec. at 113. While the Applicant, through counsel, asserts on appeal and below that he traveled to the United States solely with the intention of visiting his father and that he did not receive this job offer until approximately a year later, this directly conflicts with his statement at his 2020

adjustment of status interview that he received the job offer from his current employer prior to being admitted to the United States.[1] While we acknowledge the Petitioner's argument that his employer's letter had a typographical error as to the year he started employment, he has not provided an updated letter from his employer or other evidence to corroborate this claim and reflect that he started his employment in 2019 rather than February 2018. Moreover, contrary to his argument on appeal, the burden rests with the Applicant to demonstrate that the misrepresentation was irrelevant to the original eligibility determination and to establish his eligibility in these proceedings, including overcoming evidence of his inadmissibility. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. at 375; *see also* 8 *USCIS Policy Manual supra* at J.3(E)(2) (A concealment or a misrepresentation is material if it has a natural tendency to influence or was capable of influencing the decisions of the decision-making body). Here, the Applicant has not submitted a statement with his Form I-601, nor did he submit one on appeal, to address or explain his statement at his adjustment of status interview or to otherwise overcome the evidence in the record indicating that he intended to accept permanent employment in the United States at the time he sought admission to the United States. Therefore, the record, including as supplemented on appeal, is not sufficient to establish that he did not commit fraud or willful misrepresentation of a material fact. 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 waiver of that inadmissibility under section 212(i) of the Act.

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. 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 record does not contain a clear statement regarding whether the spouse would remain in the United States or relocate to Ecuador with the Applicant if he is denied admission. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship upon both separation and relocation.

The Director acknowledged the evidence of hardship to the Applicant's spouse upon both separation from him and relocation to Ecuador, including financial and psychological hardship, but concluded that the Applicant had not established extreme hardship to his spouse if he is denied admission. In making this determination, the Director determined the Applicant submitted evidence indicating financial hardship given the couple's joint ownership of a business in the United States, but the evidence did not sufficiently indicate that his spouse could not take on the remaining responsibilities in his absence. The Director further concluded that a psychological evaluation for the spouse,

[1] 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.

indicating that she is suffering anxiety and depression due to the Applicant's possible deportation, did not contain sufficient details of the potential effects on her daily life to establish that the hardship she would experience would be beyond that typically experienced upon separation if the Applicant's waiver application is denied. Finally, the Director acknowledged the country conditions information about Ecuador in the record in support of the Applicant's claim that his spouse could not relocate with him there due to human rights concerns, but determined that they did not indicate that the Applicant would be endangered or disadvantaged due to country conditions, as claimed.

On appeal, the Applicant reasserts that his spouse would experience financial and psychological hardship if the Form I-601 is denied. He contends that the Director's decision erred in not considering certain evidence of hardship such as a report on mental health in Ecuador. In addition, he argues that while the record may not show his spouse's current psychological suffering as rising to extreme hardship, it would in the future if she is separated from the Applicant. The Applicant further contends that the submitted evidence demonstrates the levels of poverty in Ecuador and the lack of mental health services available there to assist with the spouse's diagnosis of "adjustment disorder with depression and anxiety". Turning to financial hardship, the Applicant asserts that the Director ignored the spouse's assertions that she knows nothing about the business and that the record clearly establishes that the spouse would be left bankrupt if the Applicant could not continue running the business. The Applicant also claims that the Director neglected to review a submitted spreadsheet with family expenses and an article regarding the effects of financial stress on mental health conditions.

As an initial matter, while we acknowledge the arguments the Applicant makes regarding potential hardship to his spouse due to separation from him, as discussed above, the Applicant must establish that if he is denied admission, his spouse would experience extreme hardship upon both separation and relocation. We find that the Applicant has not established that the hardships to his spouse that would result from the latter's relocation, considered individually and cumulatively, would rise to the level of extreme hardship. With respect to the Applicant's assertion that his spouse would suffer psychological hardship upon relocation, we sympathize with the spouse's documented diagnoses. However, the evaluation did not document the impact of these diagnoses on her daily life as well as the potential impact on her mental health on relocation, aside from briefly noting she could have difficulty finding employment. Further, we note that while the psychological evaluation recommends that the spouse seek psychotherapy and consult a medical doctor, the record does not indicate whether she has sought or is receiving such treatment. In addition, the evaluation does not document the extent to which she could seek needed treatment in Ecuador.

As to financial hardship, the Applicant contends on appeal that he would face poverty in Ecuador, but he did not support this contention with documentary evidence regarding specific economic hardships his spouse would face upon relocation to Ecuador. As stated, a loss of employment or a decline in one's standard of living are common consequences of relocation that alone do not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. at 630-1 (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). We recognize the spouse's statements regarding financial hardship, including that she invested all her savings into the couple's business and would be left bankrupt if the Applicant is refused admission. Nevertheless, the submitted evidence, including the spouse's statement, tax documents, utility and phone bills, and list of expenses, does not explain how the couple's finances would be specifically impacted by the

spouse's relocation to Ecuador. The record does not demonstrate, for example, that the spouse cannot sell the business, that she and the Applicant cannot find employment in Ecuador, or otherwise show that the spouse would face financial hardship upon relocation that is beyond those ordinarily associated with deportation.

Accordingly, the record as a whole does not sufficiently establish that the Applicant's U.S. citizen spouse would suffer extreme hardship upon relocation in the event the Applicant is refused admission, as required to establish eligibility for a section 212(i) waiver. Therefore, no purpose would be served in determining whether the Applicant merits the waiver as a matter of discretion.

III. CONCLUSION

The Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and has not demonstrated the requisite extreme hardship to a qualifying relative necessary to establish eligibility for a waiver of that inadmissibility under section 212(i) of the Act. Thus, the Form I-601 remains denied.

ORDER: The appeal is dismissed.