U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23773247

Date: MAR. 7, 2023

Appeal of Los Angeles, CA 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 and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for misrepresentation of material facts. 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 Los Angeles, CA Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility, concluding the Applicant did not establish extreme hardship to her U.S. citizen spouse, the only qualifying relative. The Director further determined discretion should not be exercised in her favor. On appeal, the Applicant submits a brief challenging the inadmissibility finding, asserting her eligibility based on the record, and challenging the discretionary denial.

The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. Matter of Christo's Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). The matter is now before us on appeal. 8 C.F.R. § 103.3. 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.

With respect to the standard of proof in this matter, petitioners must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. at 376. In other words, petitioners must show that what they claim is "more likely than not" or "probably" true. 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).

If the noncitizen demonstrates the requisite extreme hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. Matter of Mendez-Moralez, 21 I&N 296, 299 (BIA 1996). We must balance the adverse factors evidencing an applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. Id. at 300 (citations omitted).

Finally, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality." Matter of Chawathe, 25 I&N Dec. at 376. That decision explains that, pursuant to the preponderance of the evidence standard, we "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." Id.

II. ANALYSIS

The Director determined that the Applicant is inadmissible under section 212(i) of Act (the Act) for misrepresentation of material facts in connection with her asylum application, her birth certificate, and concealment of her marital history. We adopt and affirm the Director's well-reasoned decision, with the comments below. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); see also Alaelua v. I.N.S., 45 F.3d 1379, 1382 (9th Cir. 1995).

A. Materiality of the Misrepresentation

In the appeal brief, the Applicant asserts that she is not subject to inadmissibility because her misrepresentation was not material. Upon de novo review, we disagree.

The test for materiality is whether the misrepresentations "can be shown ... to have been predictably capable of affecting, i.e., to have had a natural tendency to affect, the . . . Service's decisions." Kungys v. United States, 485 U.S. 759, 760 (1988); see also, Matter of D-R-, 27 I&N Dec. at 113 (adopting the Kungys "natural tendency" test as the general standard for determining whether a misrepresentation is "material" under section 212(a)(6)(C)(i) of the Act.); 8 USCIS Policy Manual,

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 signed and filed an asylum application under penalty of perjury.[1] This asylum application contained material misrepresentations, including fabricating the identity of the Applicant's father, interactions with her alleged father, as well as detention and beatings of the Applicant and her alleged father. In support of the asylum application, the Applicant submitted the purported translation of her birth certificate that corroborated the identity of her alleged father. The Applicant contends, "[w]hether Y-C-[2] was her biological father, stepfather, family friend, or near stranger is immaterial to her claim that she was detained by the Chinese government on the basis of religious practice."[3] However, the misrepresentation of her alleged father in her asylum application and corroborating birth certificate translation is material to the Applicant's claimed fear of persecution on account of political opinion (imputed from her father) and particular social group of family.

The Applicant also misrepresented her marital history, concealing a prior marriage and divorce. Whether the Applicant was previously married and properly divorced is directly material to adjudication of the I-130 petition filed by her current spouse. See Matter of D-R-, 27 I&N Dec. 105, 113 (BIA 2017) (stating that under the natural tendency test the Board considers "whether the misrepresentation tends to shut off a line of inquiry that is relevant to the alien's admissibility and that would predictably have disclosed other facts relevant to his or her eligibility for a visa, other documentation, or admission to the United States"). Therefore, concealment of the Applicant's prior marriage was also a material misrepresentation.

B. Extreme Hardship

The Applicant's brief contends that the evidence submitted rises to the level of extreme hardship, noting in particular "the country conditions in China and the U.S. citizen's status as a Taiwanese native and his political opposition to China." Apart from this argument relating to the country conditions in China, the Applicant incorporates all other claimed hardship in the record by reference.

As the Director observed, the country conditions evidence in the record does not detail any general persecution of Taiwanese nationals or immigration bans on US or Taiwanese nationals outside of COVID I9-related restrictions. Aside from the U.S. Department of State China 2021 Human Rights Report, the Applicant did not submit any evidence to establish extreme hardship resulting from relocation to Taiwan or China. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. See Matter of Soffici, 22 I&N Dec. 158, 165 (Comm. 1998)(citing Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972)). See also, Matter of Brantigan, 11 I&N Dec. 493 (BIA 1966) (The burden of proof to establish eligibility for the benefits sought rests with the petitioner in visa petition proceedings.).

Moreover, the Applicant spouse's declaration of his inability to cover his expenses is inconsistent with evidence in the record of his assets which include both $93,364 in capital gains on the Applicant's

[1] Subsequently, the Applicant withdrew this asylum application and filed an I-130 and adjustment application.
[2] Initials are used to protect the identity of the individual.
[3] The Applicant's asylum application did not assert religion as a basis for asylum.

2021 1040 joint tax return and $84,382.24 in savings shown on bank statements. Accordingly, the Applicant has not met her burden to establish extreme hardship.

C. Discretion

The Applicant disagrees with the Director's balancing of discretionary factors in the established record. The Applicant's appeal brief reiterates that the misrepresentation was not material and therefore not a significant negative discretionary factor. However, as discussed above, the misrepresentations were material and the Director correctly determined that the Applicant's misrepresentations on Form I-589 are particularly serious due to the government's interest in maintaining the integrity of a process intended to protect refugees who have suffered persecution. Matter of Gharadaghi, 19 I&N Dec. 311, 314 (BIA 1985) (fraudulent avoidance of the orderly refugee procedures that this country has established is an extremely adverse factor which can only be overcome with the most unusual showing of countervailing equities). The Applicant's equities of having a U.S. citizen spouse and living in the United States for 8 years do not outweigh the strong adverse factors. Accordingly, the Director did not err in denying the application as a matter of discretion.

III. CONCLUSION

As the Applicant has not met the extreme hardship requirement, we conclude she has not established that she is eligible for a Section 212(i) waiver. The Applicant also does not warrant a waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.