U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24342836

Date: MAR. 08, 2023

Appeal of Centennial, Colorado Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). The Director of the Centennial, Colorado Field Office denied the Applicant's Form I-601, concluding that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willfully misrepresenting a material fact, and that the record did not establish that her spouse would face extreme hardship if she were removed from the United States. The matter is now before us on appeal. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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). Upon de novo review, we will dismiss the appeal as moot.

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.

The record reflects that the Applicant was married in 2009 to D-G-L-,[1] but that they were divorced in [redacted] 2013. The Applicant applied for a nonimmigrant visa in April 2014 wherein she claimed to be divorced, which was consistent with the divorce noted above, and was granted a nonimmigrant visa in May 2014. After she was admitted to the United States, she married a United States citizen and in 2020 applied for adjustment of status by submitting both a Form I-485, Application to Register Permanent Residence or Adjust Status, and a Form I-130, Petition for Alien Relative. In her Form I-485, and during two interviews conducted in November 2020 and June 2021, she indicated that she had been married only once. The Director issued a notice of intent to deny her Form I-130 in July 2021 advising the Applicant that her statements in the two interviews contradicted the information in her nonimmigrant visa application from 2014 and that she had not provided proof that she had terminated her marriage to D-G-L-. In response, the Applicant provided a divorce certificate and her Form I-130 was approved in February 2022. The Director, however, found the Applicant was inadmissible under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i) of the Act for misrepresenting the fact of her prior marriage and for having overstayed the terms of her nonimmigrant visa, and that she had not established her spouse would suffer extreme hardship if she were removed from the United States. The Applicant resubmitted Forms I-485 and I-601, but the Director found that while the Applicant

[1] Initials are used to protect the individual's privacy.

was no longer inadmissible under section 212(a)(9)(B)(i) of the Act, she remained inadmissible for misrepresentation under section 212(a)(6)(C)(i) and had not established her spouse would suffer extreme hardship if she were removed from the United States. On appeal, the Applicant submits evidence related to her eligibility for adjustment of status and hardship to her spouse and claims that misrepresentations about her prior marriage were not willfully made as she misunderstood the questions on her form and received ineffective assistance from her former attorney.

The issues on appeal are whether the Applicant is inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact and, if so, whether she has established eligibility for a waiver of this ground of inadmissibility.

We have reviewed the entire record and for the reasons discussed below conclude that it does not support a finding of the Applicant's inadmissibility under section 212(a)(6)(C)(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 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. 8 *USCIS Policy Manual* J.3(A)(l), https://www.uscis.gov/policy-manual. A misrepresentation is material under section 212(a)(6)(C)(i) of the Act when it tends to shut off a line of inquiry that is relevant to the foreign national'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. *Matter of D-R-*, 27 I&N Dec. 105 (BIA 2017). A misrepresentation that is not relevant to an applicant's eligibility for the benefit is considered a harmless misrepresentation. 8 *USCIS Policy Manual*, *supra*, at J.3(E)(3). In other words, an applicant is not inadmissible for making a harmless misrepresentation even though the applicant misrepresented a fact. *Id.*

In this case, it is clear that the Applicant misrepresented whether or not she had previously been married. The Form I-485 that she submitted asks how many times she has been married without any limitation as to whether the marriages occurred in the United States. The form also specifically addresses prior marriages in a section bearing the heading "Information About Prior Marriages (if any)" and then specifically states, "[i]f you have been married before, *whether in the United States or in any other country*, provide the following information about your prior spouse." (emphasis added). The Applicant's signature on her application "establishes a strong presumption" that she knew and assented to its contents. *Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018). We therefore find unavailing any claim that the Applicant believed the questions on the form pertained only to marriages contracted in the United States or that it was the fault of her former attorney.

Despite this, however, we find that the misrepresentations were not material because disclosure of the prior marriage was not relevant to her overall eligibility for adjustment of status at the time it was adjudicated. In this case, there is no indication that the Applicant was not free to marry her current spouse, that her prior marriage was a factor in obtaining her nonimmigrant visa since she had disclosed in her non-immigrant visa application that she was divorced, or that it was a factor in her being admitted into the United States using that visa. And once she produced proof that her prior marriage had in fact been lawfully terminated, she was in compliance with the Form I-130 evidentiary requirements and her petition was approved. As the Applicant's attorney states, "…[the Applicant] gained absolutely no benefit from her…incorrect response."

We therefore find that the Applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act based on her claim that she had no prior marriages on her Form I-485 or during the subsequent interviews related to that form. As this is the sole remaining ground of inadmissibility identified in the Director's denial, the Applicant consequently does not require a waiver and the appeal is dismissed as moot.

ORDER: The appeal is dismissed.