U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24283176

Date: MAR. 9, 2023

Motion on Administrative Appeals 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 fraud or willful misrepresentation.

The Director of the Los Angeles, California Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's lawful permanent resident parents, the only qualifying relatives, would experience extreme hardship if the waiver under section 212(i) of the Act was not granted. We dismissed the Applicant's appeal, a subsequent motion to reconsider, and the most recent combined motion to reopen and reconsider. The matter is now before us on a motion to reconsider.

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). Upon review, we will dismiss the motion to reconsider.

I. LAW

A motion to reconsider must state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or policy. The motion must also establish that the decision was incorrect based on the evidence of record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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). A discretionary waiver of this ground of inadmissibility may be granted 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

On this motion to reconsider, the Applicant again contends that our previous dismissal was in error because he is not inadmissible to the United States under section 212(a)(6)(C)(i) of the Act and that, in the alternative, he has established his eligibility for the waiver under section 212(i) based on a claim of extreme hardship to his lawful permanent resident parents if the waiver is denied.

A. Inadmissibility

As discussed in our previous decisions, incorporated here by reference, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for filing an application to adjust status based on his claimed marriage to a U.S. citizen, which contained material misrepresentations about his date and manner of entry to the United States and a falsified Form I-94, Arrival/Departure Record, that had originally been issued to another individual in December 2003. The Applicant applied for and received an employment authorization document based on this filing. The Applicant signed both applications attesting that their contents and supporting evidence were true and correct. In our initial decision on appeal, we concluded that the Applicant's signature on these applications "establishes a strong presumption" that he knew and assented to the contents. *Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018). We acknowledged that this presumption may be rebutted through evidence that an applicant was misled and deceived by their representative when preparing the application. *Id.* However, we determined in our prior decisions that the Applicant had not submitted any evidence to support his claim that he was misled by the unidentified individual who he alleged prepared the applications or that he otherwise made the misrepresentations unknowingly.

In support of his current motion to reconsider, the Applicant submits a brief, which repeats arguments from his prior motions, specifically that he had no knowledge of the fraudulent adjustment of status and employment authorization applications. The Applicant asserts that he already submitted evidence to support this claim, in particular his statements from November 2018 and January 2022, in which he states that he was not aware of the contents of the applications. The Applicant again highlights that he that he did not send the 2004 written inquiry to U.S. Citizenship and Immigration Services (USCIS) and attached adjustment and employment application copies and, in support of this contention, notes that the inquiry letter was typed, lacked his signature, and contained an address other than the Applicant's address. As we noted in our most recent decision, the Applicant does not explain how the preparer misled or deceived him such that he did not willfully misrepresent himself. The Applicant

acknowledges in both statements that he signed blank and partially completed forms, indicating that he assented to the contents prepared and submitted by the preparer on his behalf. He has not provided sufficient evidence to establish that the fraudulent filing of his adjustment of status and employment authorization applications were due to misleading or deceptive actions on the part of the preparer, and therefore he has not overcome the presumption that arose when he signed the applications that he knew and assented to the contents therein. The Applicant has not established that we incorrectly applied the law or policy in our previous determination concluding that he is inadmissible under section 212(a)(6)(C)(i) of the Act or that our determination was incorrect based on the record at the time.

B. Extreme Hardship

As the Applicant has not established any error in our prior decisions that he is inadmissible for willful misrepresentation of a material fact, we will next address our previous determinations that he had not established eligibility for a waiver of his inadmissibility pursuant to section 212(i) of the Act.

In our initial decision on appeal, we found that the Applicant had not established eligibility for a section 212(i) waiver because he had not demonstrated that his lawful permanent resident parents would experience extreme hardship if his waiver application were denied and he must return to Mexico. The record lacked evidence demonstrating the extent of the Applicant's parents' asserted reliance on the Applicant for financial, medical, and emotional support, as well as evidence demonstrating that his other family members in the United States would be unwilling or unable to offer similar support if his waiver is denied. In our decisions dismissing the Applicant's subsequent motion to reconsider, we reiterated the finding that the brief statements submitted by the Applicant, his mother, and his adult siblings were insufficient to meet his burden to demonstrate that his parents would experience extreme hardship upon separation. In the combined motion to reopen and reconsider, the Applicant argued that the separation of his parents from their grandchildren exceeds hardship that is usual or expected per *Matter of Pilch*, 21 I&N Dec.at 630-31, given his parents' age and their status as grandparents. However, he did not further explain how their age and status as grandparents would result in hardship upon separation that exceeds the common results of deportation or separation due to inadmissibility. The Applicant also claimed we should have compared the wealth and prosperity of the family in *Matter of Pilch* in the United States to that of the Applicant's parents who lacked the same financial prosperity. But the Applicant did not cite to relevant evidence in the record supporting his contention that his parents' financial hardships would exceed the usual or expected results of separation.

In the instant motion, the Applicant repeats the argument from his prior combined motion to reopen and reconsider that we failed to consider the extreme emotional hardship his elderly parents would experience if they were separated from their grandchildren, the Applicant's three minor children. He emphasizes again the advanced age, 80 and 85-years-old, of his parents, and asserts we 'failed to consider the age difference' between his parents and children. However, the Applicant still does not explain how their age and status as grandparents will result in hardship upon separation that exceeds the common results of deportation or separation due to inadmissibility. The Applicant does not cite any portion of our decision nor any legal authority to establish our prior decision was based on the application of an incorrect legal standard.

III. CONCLUSION

The Applicant has not demonstrated that our prior decision was based on an incorrect application of law or policy or that it was incorrect based on the evidence in the record of proceedings at the time of the decision. Accordingly, we will dismiss the motion to reconsider.

ORDER: The motion to reconsider is dismissed.