U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24993059

Date: MAY 04, 2023

Appeal of Houston, Texas Field Office Decision

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

The Applicant, a native and citizen of India, has applied to adjust status to that of a lawful permanent resident (LPR). 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), for fraud or misrepresentation.

The Director of the Houston, Texas Field Office denied the application, concluding that the record did not establish that the Applicant's LPR mother would suffer extreme hardship if the Applicant were removed from the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3. The Applicant argues on appeal that his qualifying relative mother, now a U.S. citizen, will suffer extreme hardship if he is denied admission to the United States. In support of that assertion, he submits additional evidence on appeal, including medical records for his mother and financial documents.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

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).

Once the noncitizen demonstrates the requisite extreme hardship, they must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the noncitizen 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).

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. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual (providing, as guidance, the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. *See id. (citing to Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002). An 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. *See id.* In the present case, the record is unclear whether the Applicant's parent would remain in the United States or relocate to India if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his parent would experience extreme hardship both upon separation and relocation.

The Applicant contests his inadmissibility, as described in the Director's decision. He alleges he is not subject to inadmissibility under section 212(a)(6)(C)(i) of the Act, and even if he was, he is eligible for a waiver of that inadmissibility and is not subject to any other ground of inadmissibility. A willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. *Parlak v. Holder*, 578 F.3d 457 (6th Cir. 2009). For a misrepresentation to be found willful, it must be determined that the applicant was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). The misrepresentation must be made with knowledge of its falsity. *Id.* at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we "closely scrutinize the factual basis" of a finding of inadmissibility for fraud or misrepresentation because such a finding "perpetually bars an alien from admission." *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994); *Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979). A misrepresentation is "material" 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 and his spouse entered the United States in October 1999, without admission or inspection, with the assistance of a hired smuggler. Shortly after entry, the Applicant and his spouse were encountered by U.S. Customs and Border Patrol (CBP) officers at a hotel, and he provided them with a fraudulent passport that contained a name and date of birth other than his own. He misrepresented his identity, a material fact, to immigration officials. The CBP officers copied that information from the passport, ending the line of inquiry into the Applicant's identity. The Applicant does not claim to have conceded he entered without inspection and was subject to removability, but rather knowingly presented a false identity document when questioned by CBP officers. The Applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

The Applicant has resided in the United States continuously since his October 1999 entry, and he concurrently filed his waiver application and a Form I-485, Application to Register Permanent Residence or Adjust Status, in October 2018. The Director denied the waiver application because the Applicant did not establish his qualifying relative – his mother – would suffer extreme hardship if he were denied admission to the United States. In denying the waiver application, the Director did not make a determination as to whether the Applicant merited a favorable exercise of discretion.

On appeal, the Applicant argues that his U.S. citizen mother, who is 73years old and resides with him and his spouse, would experience extreme hardship if his waiver application were denied. Specifically, the Applicant cites his mother's advanced stage lung cancer and Parkinson's disease, her age, and her reliance on the Applicant for financial support, medical care, and daily care and support. In his affidavit on appeal, the Applicant explains his mother has Stage 3 lung cancer that has recently begun to spread again, requiring increasingly aggressive and advanced treatment. He also states that she suffers from Parkinson's disease, which requires medication, as does her high blood pressure. In his affidavit, he further explains that his mother resides with himself and his spouse, and they provide physically and financially for her, due to her illnesses and other limitations, such as her inability to speak English or to drive.

In the Director's decision, he noted the Applicant filed four pages of medical documentation for his qualifying relative, two pages of which were illegible. The Director also indicated no explanation was provided with the documentation and the record contained no statement as to the specific hardship the Applicant's parent would experience. Now with his appeal, the Applicant has submitted extensive additional evidence that was not available at the time he filed his Form I-601 in October 2018. Among those documents, the Applicant provided evidence related to his eligibility to adjust his status to LPR, letters of support regarding his life in the United States and his mother's health condition, documents related to his removal proceedings, an affidavit from the Applicant, birth certificates for his children, evidence of ties to his community and charitable activity, and medical records related to his mother's health conditions.

Because the Director has not reviewed this additional documentation, we will return the matter to the Director to consider the new claims and evidence of extreme hardship and to determine whether the Applicant warrants a waiver in the exercise of discretion.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.