



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 25592073

Date: May 24, 2023

Appeal of Las Vegas, Nevada Field Office Decision

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

The Director of the Las Vegas, NV 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 as required to demonstrate eligibility for the discretionary waiver under section 212(i) of the Act.

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). The matter is now before us on appeal. 8 C.F.R. § 103.3. Upon de novo review, we will dismiss the appeal as moot, because the Applicant is not inadmissible.

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).

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.

II. ANALYSIS

The Applicant signed a Form I-485 (Rev. 10/05/15) in October 2016 with the following question:

Have you EVER, in or outside the United States been arrested, cited charged, indicted, convicted, fined or imprisoned for breaking or violating any law or excluding traffic violations?

The Applicant answered, no.

At a September 2017 interview based on this Form I-485 (Rev. 10/05/15), the Director inquired about records showing that on [REDACTED] 2014, the Applicant had been “arrested or received” by the [REDACTED] Police Department, taken to the police station, and subsequently released, the interviewing officer took a sworn statement with the following questions and answers:

Q: Have you ever been arrested?

A: No.

Q: Our records show you were arrested in 2014. Why did you not tell me about this arrest?

A: No, I was not arrested. I went to buy a car from this house and then the police came, and they took me 3-4 hours and then they let me go. I did not go to court or anything. (Attorney wants to state on the record that the applicant was not arrested, handcuffed, cited charged with any crimes)

Q: What were you detained for?

A: I went to buy the car from men, then the police came, and they took me and the guy to the police station. After 3 or 4 hours, they let me go. They said they didn’t have any problems with me and if they needed anything from me, they would send me a letter, but I never received anything. I did not have court or anything.

Q: I had asked you previously if you had any problems with the law anywhere in the world. Why didn’t you tell me this happened?

A: Because I was not involved in any problems, and they told me I wasn’t involved in any problems, so I didn’t see it as a problem.

Based on the evidence in the record and the Applicant’s testimony under oath, the Director found the Applicant inadmissible for making a willful and material misrepresentation because he omitted his 2014 interaction with the police on his Form I-485.

In response to a 2017 Notice of Intent to Deny, in lieu of providing a request for a waiver under I-601, the Applicant claimed he was not inadmissible. In support of his claim of inadmissibility, the Applicant provided a certification from the [REDACTED] Police Department that he was detained and not arrested. He asserted that his certification from the [REDACTED] Police Department met his burden to show he was never “been arrested, cited charged, indicted, convicted, fined or imprisoned for breaking or violating any law.” The Certificate of Release from the [REDACTED] Police Department states that, “I hereby certify that the taking into custody of [REDACTED] 14 by the [REDACTED] POICE DEPARTMENT was a detention only, not an arrest.” He also provided a receipt of the [REDACTED] Shuttle Bus corroborating his claim that he was going to California from [REDACTED] (where he still resides) to purchase a car. He contended that Form I-485 he signed did not specifically ask whether he was ever detained, therefore he made no misrepresentation.

In January 2018, the Director rejected the Applicant’s claim he was inadmissible, denied the Form I-485 (Rev. 10/05/15) and approved the Form I-130. The Applicant appealed to the Director based on

the same argument that he was not inadmissible because the I-485 he signed did not ask whether he had ever been detained. The Director dismissed that appeal.

In November 2020, the Applicant submitted a new Form I-485 (Rev. 10/15/19). The 2019 version of Form I-485 was different than the 2015 version of the form he previously signed, because the revised form was amended to ask more broadly whether an applicant had ever been detained. The Applicant accurately checked that he had been detained on the 2019 revised version of the Form I-485. This time, the Applicant filed a Form I-601 seeking to waive, based on extreme hardship to his qualifying relative, his previously found and upheld inadmissibility. The Director denied the I-601 waiver, finding the Applicant did not meet his burden of demonstrating extreme hardship on his qualifying relative. The Applicant brought this appeal of the denial of the I-601 challenging the Director's finding that the Applicant did not meet the extreme hardship requirement.

We first examine the underlying basis of the inadmissibility.¹ If we determine that the Applicant is not inadmissible, then he does not require a Form I-601 waiver of inadmissibility and his appeal is moot. Upon de novo review, we find that the Applicant did not make a misrepresentation and, therefore, is not inadmissible. Even assuming arguendo that there was a misrepresentation, it was not willful, because the Applicant was not fully aware of the nature of the information sought and he did not knowingly, intentionally, and deliberately misrepresent material facts. *Matter of G-G-*, 7 I&N Dec. at 161.

Based on the Applicant's sworn statement at his 2017 interview, evidence provided by the Applicant (including a certification from the [] Police Department that he was detained and not arrested), and arguments the Applicant previously made to the Director in response to the Notice of Intent to Deny and subsequent denial of motion to reopen and reconsider, we determine that the Applicant understood that he had been detained, but did not believe he had ever been arrested. Both of the Director's rejections of the Applicant's evidence and arguments supporting admissibility occurred prior to the 2019 revision of the Form I-485 (Rev. 10/05/15) which captures information regarding detainments – a question not on the 2015 version of Form I-485 that the Applicant was questioned about at his interview.

The Applicant plausibly explained at his interview, in response to a Notice of Intent to Deny, and on motion to reopen and reconsider to the Director that his understanding was that he had not been arrested, cited, charged, indicted, convicted, fined or imprisoned on account of breaking or violating any law or ordinance as the question on the I-485 asked; but rather, he was detained by mistake and sent home after a brief detention. He was never charged with a crime related to this detention and he provided a certification from the [] Police Department that he was detained and not arrested. We accept the Applicant's plausible explanation.

Even assuming arguendo, there was a misrepresentation, it was not willful. 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-*

¹ We note that the Applicant raised the fact that he was not inadmissible to the Director twice but did not assert his inadmissibility to us. Upon de novo review, we raise the issue sua sponte whether the Applicant is inadmissible.

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). Based on the individualized facts of this case discussed supra, we determine that the Applicant also met his burden of showing he is admissible, and alternatively, he did not make a willful misrepresentation.

III. CONCLUSION

Because the Applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, the only inadmissibility ground the Applicant requested be waived through his Form I-601, he does not need an approved waiver application to become a lawful permanent resident. That renders the Form I-601 before us unnecessary, and the appeal of its denial will therefore be dismissed as moot.²

ORDER: The appeal is dismissed.

² Because no waiver of admissibility is needed, we need not consider new evidence of extreme hardship that the Applicant submitted on appeal.