U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27521768

Date: SEPT. 18, 2023

Motion on Administrative Appeals 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), for fraud or misrepresentation of material facts. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. 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.

The Director of the Nebraska Service Center denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant was inadmissible for fraud or misrepresentation of material facts under section 212(a)(6)(C)(i) of the Act and the record did not establish that the Applicant's qualifying relative would experience extreme hardship if she were denied admission to the United States. We dismissed her subsequent appeal. The matter is now before us on a motion to reconsider.

On motion, the Applicant submits a brief contesting inadmissibility and arguing that any fraud or misrepresentation attributed to her was not material. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In our prior decision, which we hereby incorporate by reference, we highlighted that the Applicant and her spouse married twice; once in 1992 in a religious ceremony, and again in 2007, after the Applicant's spouse became a naturalized U.S. citizen based on his 1999[1] marriage to another

[1] The specific date of the Applicant's spouse's marriage to the other individual remains unclear. As highlighted in our decision on appeal, an affidavit from the Applicant's spouse submitted with the waiver application states that he married

individual and the subsequent termination of that marriage. The Applicant disclosed only her 2007 marriage to her spouse on her visa application and during her immigration visa interview with a U.S. Department of State (DOS) consular officer; she did not voluntarily disclose their prior marriage in 1992.[2] We further highlighted that the Applicant and her spouse have two children, both born prior to their 2007 marriage and one born during the Applicant's spouse's marriage to another individual. We concluded that, contrary to the assertions of the Applicant, her failure to disclose her 1992 marriage to her spouse was both a misrepresentation and was material, in that the disclosure of her previous marriage to her spouse would have led to further inquiry about the nature, overall timeline, and bona fides of the Applicant's relationship with him. See section 240(a)(1) of the Act (stating that an applicant for an immigrant visa as an immediate relative of a U.S. citizen must establish the bona fides of the claimed relationship"); Matter of D-R-, 27 I&N Dec. 105, 113 (BIA 2017) (concluding that 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 noncitizen'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). We further concluded that the Applicant had not met her burden of establishing extreme hardship to her U.S. citizen spouse were her application for admission denied, as required.

On motion, the Applicant contests the correctness of our prior decision with respect to inadmissibility only.[3] The Applicant asserts that we erred in determining that her failure to mention her 1992 marriage to her spouse by religious ceremony was material. In support of this assertion, she proffers two scenarios: (1) that her 1992 marriage by religious ceremony was legally valid, that her spouse's subsequent 1999 marriage to another individual was therefore invalid by reason of polygamy, and that "[n]either a subsequent bigamous marriage by the Applicant's spouse, or purported re-marriage of the Applicant and her spouse in 2007, would change the act that the Applicant has been married to her spouse since 1992"; or (2) that, in the alternative, her 1992 marriage by religious ceremony was invalid and, "[i]n that case, the Applicant did not commit a material misrepresentation by stating that she first married her spouse in 2007 because, legally, her statement was true."

Section 102.8-1(B)(a) of Volume 9 of the Foreign Affairs Manual (FAM) provides that "the law of the place of marriage celebration controls," and thus, if the marriage was properly and legally performed in the place of celebration and legally recognized, the marriage is deemed to be valid for immigration purposes. See also Matter of Arenas, 15 I&N Dec. 174, 174 (BIA 1975) (stating that "in determining the validity of a marriage for immigration purposes, the law of the place of celebration of the marriage will generally govern").

Here, the U.S. Visa Reciprocity Schedule for India, maintained by DOS, provides the following regarding marriage certificates: "Prior to 2006, marriages by Hindus, Buddhists, Jains, or Sikhs were not required to be registered, but may have been voluntarily registered under the Hindu Marriage Act

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the other individual in 2000, but a G-325A, Biographic Information (Form G-325A), signed in 2007 and submitted with the Form I-130, Petition for Alien Relative (Form I-130), submitted on the Applicant's behalf, provides that his marriage to the other individual occurred in 1999.

[2] We further noted that the Applicant's Form G-325A, signed in 2007 and submitted with the Form I-130 filed on her behalf, did not list any prior marriage. Her spouse's G-325A listed only his prior marriage to the other individual.

[3] The Applicant's motion to reconsider does not challenge our conclusion that she did not meet her burden to demonstrate extreme hardship to her U.S. citizen spouse, her only qualifying relative, and accordingly that issue is deemed waived. See Matter of M-A-S-, 24 I&N Dec. 762, 767 n.2 (BIA 2009) (citing Greenlaw v. United States, 128 S. Ct. 2559 (2008) (upholding the party presentation rule)).

of 1955." U.S. Visa Reciprocity and Civil Documents Schedule, available at https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/India.html. Because there was no requirement that a marriage prior to 2006 be registered, this language indicates that the Applicant's 1992 marriage to her spouse by religious ceremony is recognized as legally valid in India. As such, and in light of Matter of Arenas, 15 I&N Dec. 174, we recognize that unregistered marriage as legally valid, as well.

As stated above, a misrepresentation is material if it "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 and considering "whether the misrepresentation 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 his or her eligibility for a visa, other documentation, or admission to the United States"); 8 USCIS Policy Manual, J.3(E)(2), http://www.uscis.gov/policy-manual (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).

The Applicant's brief does not dispute that she omitted mention of her 1992 marriage to her spouse by religious ceremony from her visa application and during her interview with the consular officer. The fact that the Applicant was legally married her spouse in 1992, and thereby not divorced from him prior to his second marriage, and his adjustment of status and subsequent naturalization based on that marriage, is directly material to the validity of the approved Form I-130 filed on the Applicant's behalf and would predictably have disclosed facts relevant to her eligibility for a visa or admission to the United States. Borrowing from our decision on appeal, the misrepresentation of the Applicant's marital history by omission of the 1992 marriage on the Applicant's visa application shut off a line of inquiry into the nature of the Applicant's relationship with her spouse, the overall timeline of their relationship and marriage, the bona fides of their relationship, and its overall impact on the approval of the Form I-130 filed on her behalf.[4] Accordingly, the Applicant's misrepresentation was material, and she remains inadmissible under section 212(a)(6)(C)(i) of the Act.

Finally, and critically, we highlight that a DOS consular officer determined that the Applicant was inadmissible for fraud or misrepresentation of a material fact under section 212(a)(6)(C)(i) of the Act. Because the Applicant is residing abroad and applying for an immigrant visa, DOS makes the final determination concerning her admissibility and eligibility for a visa.

On motion to reconsider, the Applicant has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed and the waiver application remains denied. 8 C.F.R. § 103.5(a)(4).

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[4] Because we conclude that the Applicant's first marriage to her spouse was valid and that omission of it was material, we need not reach the Applicant's alternative argument that she is not inadmissible based on the premise that her 1992 marriage to her spouse by religious ceremony was not valid. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The motion to reconsider is dismissed.