U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25714789

Date: MAY 19, 2023

Appeal of Imperial, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico, seeks to adjust status to that of a lawful permanent resident (LPR)). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for human smuggling and for fraud or misrepresentation, and he seeks waivers of such inadmissibility available under sections 212(d)(11) and (i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(d)(11) and (i), respectively.

The Director of the Imperial, California Field Office, determined that the Applicant is inadmissible under 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or misrepresentation and denied the waiver application under section 212(i) of the Act, in part, as a matter of discretion because he is also inadmissible under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for human smuggling and is ineligible for a waiver of this inadmissibility ground under section 212(d)(11) of the Act. The matter is now before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

On appeal, the Applicant submits a brief and additional evidence and maintains that he is not inadmissible under for human smuggling and is otherwise eligible for a section 212(i) waiver of his inadmissibility under 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation.[1] Upon de novo review, we will dismiss the appeal.

Any noncitizen who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other noncitizen to enter or to try to enter the United States in violation of law is inadmissible under section 212(a)(6)(E)(i) of the Act. There is a limited discretionary waiver for this ground of inadmissibility for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, in the case of certain applicants seeking admission or adjustment of status, if the applicant has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the applicant's spouse, parent, son, or daughter (and no other individual), to enter the United States in violation of law. Sections 212(a)(6)(E)(iii) and 212(d)(11) of the Act. The Applicant has the burden

[1] The Applicant concedes that he is inadmissible for fraud or willful misrepresentation. He does not dispute, and the record shows, that he previously used multiple identities and false identification documents for immigration benefits.

to establish eligibility for the benefit sought by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

The record supports the Director's determination that the Applicant is inadmissible under section 212(a)(6)(E)(i) of the Act for human smuggling and he has not established his eligibility for a waiver of this ground of inadmissibility. The record shows that in [redacted] 1980, the Applicant, then claiming to be an LPR of the United States under a false identity, was apprehended at or near [redacted] Arizona while transporting three noncitizens away from the U.S.-Mexico border. The record includes a Form I-213, Record of Deportable/Inadmissible Alien, for the Applicant and for each of the three noncitizens, as well as their sworn statements, consistently describing in detail their in-person meetings with the Applicant in Mexico and prearrangement to meet him in the United States after they crossed the border with a smuggler's help so the Applicant can further transport them to [redacted] Nevada, for payment. They also subsequently served as material witnesses against the Applicant before the United States District Court for the District of Arizona, and in [redacted] 1980, the court accepted the Applicant's guilty plea, convicted him of knowingly and unlawfully transporting or moving a noncitizen away from the border to near [redacted] Arizona pursuant to 8 U.S.C. § 1324(a)(2) (Transportation of Illegal Alien) and 8 U.S.C. § 2 (Aiding and Abetting), and sentenced him to a suspended jail sentence of six months, four and a half years of supervised probation, and a $500 fine.

The Applicant on appeal concedes his [redacted] 1980 conviction and does not dispute that he knowingly and unlawfully transported the noncitizens in the United States in [redacted] 1980. However, he argues that his conviction does not render him inadmissible under section 212(a)(6)(E)(i) of the Act because he only transported the individuals within the United States. Specifically, he contends that his offense of transporting the noncitizens *within* the United States is distinct from the act of smuggling individuals *into* the country across the border, and absent "specific evidence" that he knowingly or intentionally encouraged, facilitated, or otherwise assisted in bringing the individuals into United States prior to their entries, he is not inadmissible for smuggling them. In support of these assertions, the Applicant references several cases, including *United States v. Noriega-Perez*, 670 F.3d 1033 (9th Cir. 2012); *United States v. Hernandez-Orellana*, 539 F.3d 994 (9th Cir. 2008); *United States v. Lopez,* 484 F.3d 1186 (9th Cir. 2007); *Matter of I-M-*, 7 I&N Dec. 389 (BIA 1957); *Parra-Rojas v. Att'y Gen. U.S.*, 747 F.3d 164 (3d Cir. 2014); and *Rodriguez-Gutierrez v. I.N.S.,* 59 F.3d 504, 509, n.3 (5th Cir. 1995). We note, however, that we are not bound by non-controlling circuit court cases. *Matter of Anselmo*, 20 I&N Dec. 25, 31 (BIA 1989) (stating that an appeal agency is "not required to accept an adverse determination by one circuit court of appeals as binding throughout the United States"). Further, the cases he cites arising in the U.S. Court of Appeals for the Ninth Circuit, in whose jurisdiction this case falls, do not address whether convictions under 8 U.S.C. § 1324(a)(2) implicate the smuggling inadmissibility ground under the Act. *See, e.g.*, *Noriega-Perez*, 670 F.3d at 1040 (leaving no doubt that a person could aid and abet a "brings to" offense under 8 U.S.C. § 1324(a)(2) and § 2 entirely from within the United States, and emphasizing that in some situations a person who does not physically transport aliens across the border may still be liable for aiding and abetting a "brings to" offense) (citing *Lopez*, 484 F.3d at 1199).

We acknowledge the Board of Immigration Appeals in *Matter of I-M-*, 7 I&N Dec. at 391, cited by the Applicant, found that transportation of noncitizens within in the United States under 8 U.S.C.§ 1324 does not require as an element of the offense "aiding and abetting" entry into United States for purposes of establishing deportability for human smuggling under former section 241(a)(13)

of the Act. However, regardless, a conviction is not required to render the Applicant inadmissible for human smuggling under section 212(a)(6)(E)(i) of the Act. *See generally Matter of Martinez-Serrano,* 25 I&N Dec. 151, 153 (BIA 2009) (stating that the equivalent removability ground under section 237(a)(1)(E)(i) of the Act, 8 U.S.C. § 1227(a)(1)(E)(i), for human smuggling requires no conviction). Further, as stated, the Applicant has the burden in establishing his eligibility, including that he is not inadmissible. *Matter of Chawathe*, 25 I&N Dec. at 375. Here, in addition to the Applicant's undisputed record of conviction under 8 U.S.C. § 1324(a)(2), other independent evidence of record indicates that he had picked up the three noncitizens shortly after they unlawfully entered the United States in [redacted] 1980 as part of a prearranged plan with a smuggler who had assisted the individuals cross the border and that he was involved in these arrangements prior to the individuals being smuggled into the United States. Although the Applicant asserts that transporting the noncitizens within the United States was not specifically linked to any smuggling plans, the record contains sufficient evidence showing that he was involved in the plan to bring them to the border and prearranged for his stateside transportation before they entered the country. *See Matter of I-M-*, 7 I&N Dec. at 391 (explaining that transporting individuals after unlawful entry according to "a previous design" may constitute human smuggling, particularly where there is evidence that the applicant knew the assisted individuals beforehand, contacted them while they were still in Mexico, or knew a middleman who facilitated their plans, and there was prior conversation or arrangement before entry); *Hernandez-Guadarrama v. Ashcroft*, 394 F.3d 674, 679 (9th Cir. 2005) (stating that a person charged with comparable deportability under section 237(a)(1)(E)(i) of the Act who knowingly participated in a "prearranged plan to bring [illegal aliens] to the border, and ... to meet them on the other side of the border," falls within the purview of the Act) (citations omitted).

Consequently, the Applicant is inadmissible under section 212(a)(6)(E)(i) of the Act for human smuggling, but he is ineligible for a waiver of this inadmissibility ground available under section 212(d)(11) of the Act because the individuals he helped smuggle into the United States were not his spouse, parent, son, or daughter. Accordingly, no purpose would be served in addressing his request for a waiver under section 212(i) of the Act, as he would remain inadmissible for human smuggling under section 212(a)(6)(E)(i) of the Act.

ORDER: The appeal is dismissed.