U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22726636

Date: OCT. 31, 2022

Appeal of New York, New York Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Dominica currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A foreign national 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 fraud or misrepresentation and seeks a waiver of that inadmissibility. Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). 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.

The Director of the New York, New York Field Office denied the application, concluding that the record did not establish that denying admission to the Applicant would cause extreme hardship to her qualifying relative, her husband.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Any noncitizen who seeks to procure, sought to procure, or has procured a benefit under the Act by fraud or willfully misrepresenting a material fact is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Individuals found inadmissible for fraud or misrepresentation may seek a discretionary waiver of inadmissibility under section 212(i) of the Act. This waiver is available if denial of admission would result in extreme hardship to a United States citizen or LPR spouse or parent.

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

A. Procedural History

In June 2010, the Applicant applied for and received a nonimmigrant visa to the United States. On her application, she gave her marital status as "married" and stated the biographical information of her spouse. She also stated that she and her husband lived at the same address. However, the record indicates that the Applicant's divorce from her first husband was finalized in 2004 and they did not live together in 2010. On March 29, 2011, the Applicant was admitted to the United States as a B-2 nonimmigrant through September 27, 2011. She remains in the United States.

On [redacted] 2013, the Applicant married a U.S. citizen. The Applicant's husband subsequently filed a Form I-130, Petition for Alien Relative, on her behalf. The Applicant filed an accompanying Form I-485, Application to Register Permanent Residence or Adjust Status, on the same day. The Form I-130 was later approved.

In adjudicating the Form I-485, the Director found the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act for committing a willful misrepresentation of material fact by falsely stating she was married in her 2010 nonimmigrant visa application. Accordingly, the Director issued a request for evidence directing the Applicant to file a Form I-601, Application for Waiver of Grounds of Inadmissibility. The Applicant subsequently filed Form I-601, which the Director denied, finding that the Applicant did not demonstrate that denial of admission would result in extreme hardship to her U.S. citizen husband.

On appeal, the Applicant denies that she is inadmissible, stating that the misrepresentation in her visa application was neither material nor willful. In the alternative, the Applicant asserts that her husband would undergo extreme hardship if she were denied admission to the United States and that the inadmissibility should be waived as a matter of discretion.

B. Willful Misrepresentation of a Material Fact

The first issue on appeal is whether the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. In order to support a finding of willful misrepresentation of a material fact, the record must show that an applicant procured or sought to procure a benefit under U.S. immigration laws, that they made a false representation, that the false representation was made willfully, that the false representation was material, and that the false representation was made to a U.S. government official. *See Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994); *see also* 8 *USCIS Policy Manual* J.2(B), http://www.uscis.gov/policymanual.

A false representation is an assertion or manifestation that is not in accordance with the true facts. *See generally* 8 *USCIS Policy Manual* J.3(C)(1), https://www.uscis.gov/policymanual. The record indicates, and the Applicant does not dispute, that she was not actually married or living with her first

husband when she made her nonimmigrant visa application in 2010. Therefore, by giving her marital status as "married," stating the biographical information of her former husband as that of her current spouse, and stating that they lived at the same address, the Applicant made a false representation. It is also undisputed that the Applicant made this statement to a U.S. government official, namely, an officer of the U.S. Department of State; and that she did so while seeking to procure a visa, which is a benefit under U.S. immigration laws. However, the Applicant states that her false representation does not render her inadmissible because it was neither willful nor material.

1. Willfulness

A false representation is considered willful if it is made knowingly, as opposed to accidentally, inadvertently, or in a good faith belief that the factual claims are true. *See Matter of Healy and Goodchild,* 17 I&N Dec. 22 (BIA 1979); *see generally* 8 *USCIS Policy Manual*, *supra* at J.3(D)(1). On appeal, the Applicant asserts that her false representation was not made knowingly. The affidavit submitted on appeal states: "When I applied for a visitor's visa in 2010, I did not know that I was divorced from my previous husband...I knew I was separated, and I knew he had started divorce proceedings, but I never followed up to see how they had ended."

First, it is noted that the nonimmigrant visa application question regarding marital status includes the option "legally separated." The Applicant does not provide an explanation of why she chose the "married" option instead despite knowing, by her own account, that she was separated and that her husband had initiated divorce proceedings against her in 2003. Furthermore, the Applicant electronically signed her nonimmigrant visa application, certifying under penalty of perjury that she had read and understood the questions therein and that her answers were true and correct to the best of her knowledge and belief.

To support her assertion that she believed she was still married at the time of her 2010 visa application, the Applicant states in her affidavit that when she was hospitalized in 2009, she told the hospital that she was married to her first husband. To support this claim, she submits a medical appointment card that lists him as her next of kin but does not mention any specific relationship, marital or otherwise. Thus, the card does not support her claims that she believed they were still married and that she told the hospital that they were married.

It is further noted that when she was asked to give her husband's address on the visa application, the Applicant stated, "same as home address," indicating that she and her first husband lived in the same location.[1] On appeal, the Applicant states that this was due to the nature of place names in Dominica, where many people can live in the same neighborhood without actually living in the same household, and lists Castle Comfort, Wall House, and Beaux Bois as examples of such neighborhoods. She further states: "If I mentioned Castle Comfort or Wall House (or Wallhouse) as the place where I lived and also as the place where he lived, I didn't mean that we lived in the same home. I just meant that we lived in the same neighborhood...[T]here were no more precise addresses that I could have given for [my ex-husband] and myself in 2010 to make it clear we weren't living together [because] [t]he houses

[1] The divorce documentation included with the petition indicates that the Applicant and her first husband had been living apart since October 1995.

in that part of Dominica don't have numbers." The appeal includes various forms of documentation regarding this claim.

The record indicates that the Applicant listed her home address on the nonimmigrant visa application as [ ] Lane, [ ] Roseau, Dominica. Since this address includes a house number, it conflicts with her assertion that the "houses in that part of Dominica don't have numbers." Inconsistencies in the record must be resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, the listed address does not mention any of the neighborhoods the Applicant claims are imprecise place names. *Id.* Thus, the Applicant's stated reasons for saying she and her husband had the same address are inconsistent with the facts. The evidence of record does not credibly explain why, given that they hadn't lived together since 1995, the Applicant stated in her 2010 visa application that she and her first husband shared a home address.

In the brief submitted on appeal, the Applicant argues that the Director's prior decision regarding the Form I-130 filed on her behalf contradicts the inadmissibility finding in the Form I-485 adjudication. During her Form I-130 interview, the Applicant stated that she was unaware of her divorce until she began planning her wedding to her second husband. Due to this factor, the Applicant's 2010 statement in her nonimmigrant visa application that she was still married, and the Applicant's travel history, the Director found that the Applicant had never been served with a final divorce decree in 2004, which raised doubts as to the validity of that divorce. After a series of appellate decisions, this denial was overturned and the Form I-130 was approved.

In the brief, the Applicant states that "USCIS appeared to accept that [Applicant] was not aware of her divorce contemporaneously with its occurrence...[and] should not have subsequently changed course in this regard." However, the decisive issue in that case was not the Applicant's awareness of the divorce, but whether that divorce was valid if the Applicant was never served with a final decree. Since the divorce would have been valid whether or not the Applicant was so served, the Form I-130 was approved. This decision did not reach the factual issue of the Applicant's awareness of the finality of her divorce at the time of her 2010 visa application and therefore does not contradict the subsequent finding of inadmissibility.

The record indicates that the Applicant was aware that her husband had filed for divorce in 2003, several years before her visa application of June 2010. According to her affidavit, at the time of her visa application she knew that they were separated. However, on the visa application question regarding her marital status, she chose the "married" option rather than "legally separated." While the Applicant states that she did so in the sincere belief that she was still married, she provides an insufficient explanation for why her visa application also stated that she and her husband lived at the same address despite knowing they had not lived together in years. Additionally, she certified the truthfulness and correctness of her answers on the nonimmigrant visa application under penalty of perjury. We therefore find that she made false representations knowing that they were false, and that these representations were therefore willful.[2]

---

[2] A finding of willful misrepresentation does not require a finding of any intention to deceive. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 290 (BIA 1975).

2. Materiality

A false representation is considered material if it tends to cut off a line of inquiry that is relevant to the person's admissibility and that would have predictably 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 (BIA 2017). In order to be issued a nonimmigrant visa to the United States, a noncitizen must overcome the statutory presumption at 214(b) of the Act, 8 U.S.C. § 1184(b), that they are an intending immigrant. Therefore, a noncitizen applying for a nonimmigrant visa must demonstrate to the consular officer that they have no intention of abandoning their foreign residence.[3]

The Applicant contends that her false representations were not material because her visa was granted on the basis of her past visa history and her successful business in Dominica, rather than on the basis of her marital status. She states that the consular officer at her visa interview only asked about her financial status and her job, and that furthermore unmarried people from Dominica can get visas to visit the United States, so even if she had given her marital status as divorced, she still would have been granted the visa.

First, we must determine whether the misrepresentation tended to shut off a line of inquiry which was relevant to the Applicant's eligibility. We note that even if, as the Applicant asserts, the consular officer did not ask about the Applicant's marital status, it does not demonstrate that this status was immaterial. Rather, the Applicant's certification on the application that she was still married and living with her husband in Dominica had a natural tendency to affect the consular officer's decision-making regarding what questions to ask. This shut off an appropriate line of inquiry regarding the Applicant's family ties to Dominica, a topic that was relevant to determining whether she intended to abandon her residence there. The topic was especially relevant in this instance because the Applicant states in her affidavit that she was in a relationship with her current husband, a U.S. citizen who resides in the United States, at least as far back as 2008, two years prior to her visa application. This fact may have been discovered had the consular officer been aware that she was no longer married to or living with her first husband.

Next, we must determine whether an inquiry about the Applicant's marital status might have resulted in a determination of ineligibility. In order to qualify for a nonimmigrant visitor visa, a noncitizen must establish to a State Department consular officer that they have no intention of abandoning their foreign residence and that they are visiting the United States primarily for business or pleasure. Section 214(b) of the Act; section 101(a)(15)(B) of the Act, 8 U.S.C. § 1101(a)(15)(b). The Applicant states in her affidavit that other unmarried Dominicans she knew of received visitor visas based on their finances and jobs, and that based on her strong employment history and the fact that she had received a visitor visa before, she would have been granted the visa in 2010 regardless of her false representation. We disagree, as an inquiry about the Applicant's marital status might have resulted in a determination of ineligibility.

First, regarding the Applicant's visa history, we note that her prior visitor visa was granted in 2000, while she was still married. Second, as noted above, the Applicant was in a relationship with her future second husband in the United States at the time she applied for her second visitor visa in 2010,

[3] *See* 9 Foreign Affairs Manual 401.1-3(E), https://fam.state.gov/FAM/09FAM040101.html (last visited Oct. 25, 2022).

a fact that pertained to her nonimmigrant intent and which may have been discovered had she stated her true marital status. The Applicant has not demonstrated that her strong finances and employment history would have overcome this issue had it been known to the consular officer. Therefore, we find that her misrepresentations were material.

The Applicant refers to several of our non-precedent decisions, including one concerning an applicant who made a false representation in his visa application regarding whether his wife was in the United States. This decision was not published as precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

In the non-precedent case submitted, the appellant's statement that his wife was not in the United States was correct at the time he first made it in his visa application, unlike the present Applicant's statements about her marital status and her first husband's residence. After the appellant's wife travelled to the United States, the agent he had hired to complete his visa application resubmitted that application without his knowledge and without asking whether there had been any changes. In the present case, the Applicant prepared and submitted her own visa application and certified that it was true and correct. Finally, in the non-precedent case, the appellant disclosed in his application that his wife had a nonimmigrant visa, which was sufficient to raise any relevant questions about his ties to the United States, and he was never interviewed by a consular officer. In the present case, the Applicant's statements regarding her marital status tended to shut off the line of inquiry regarding her family ties to Dominica which the consular officer in her case may have pursued had they known the true facts. The non-precedent case is therefore distinguishable from the present case for several reasons, and we do not consider it persuasive.

None of the other non-precedent cases the Applicant submitted to establish the non-materiality of her misrepresentation involve nonimmigrant visa applications. Several of them concern instances where the applicant did not actually apply for or receive an immigration benefit when making their misrepresentation, whereas the Applicant did both. Several others concern misrepresentations which did not affect eligibility for the benefit sought. As explained above, in this instance, the Applicant's claims that she was married and lived at the same address as her husband did affect her eligibility, since they concerned her ties to Dominica, and such ties help consular officers decide whether a visa applicant has overcome the presumption of immigrant intent or whether they intend to abandon their foreign residence and remain in the United States.[4]

The burden of proof is upon an applicant to establish that they are admissible to the United States. Section 291 of the Act. We conclude that the Applicant has not overcome the determination of inadmissibility under section 212(a)(6)(C)(i) of the Act. As a consequence, she requires a waiver of inadmissibility and must establish extreme hardship to her spouse to qualify for such a waiver.

[4] *See* 9 Foreign Affairs Manual, *supra* at 401.1-3(E)(2).

C. 2011 Entry into the United States

Beyond the decision of the Director, we note that the last time she entered the United States, on March 29, 2011, the Applicant was referred to secondary inspection. The secondary inspection report includes comments from the U.S. Customs and Border Protection officer who questioned her, which note several factors that demonstrated the Applicant's nonimmigrant intent, including her work history, financial status, and ownership of property in Dominica. The comments also specifically mention that the Applicant "has a husband & older child in Dominica...both her & her spouse are professional." (*capitalization changed for readability*). No mention is made of the separation or divorce, pending or otherwise.

The record therefore indicates that in 2011, the Applicant spoke about her marriage to her first husband as an ongoing matter and did not mention her separation or divorce.[5] She did so in an interview with a U.S. government official while seeking entry into the United States, which is a benefit under U.S. immigration laws. By her own admission, she knew at this time that she had been separated from her husband for years and that her divorce had been pending since 2003, making her actions willful. The officer then relied on the Applicant's assertions regarding her family ties to Dominica when determining whether to grant her entry into the United States, making those assertions material. The Applicant therefore appears to have committed another willful misrepresentation of a material fact that was not disclosed on her Form I-601.

Because the Applicant was not previously put on notice of this derogatory information and provided with the chance to respond, it is not part of the basis for this dismissal. 8 C.F.R. § 103.2(b)(16)(i). However, this incident should be addressed in any future proceedings where the Applicant's admissibility is an issue.

D. Extreme Hardship

The Applicant states that if she is inadmissible, she should receive a waiver of this inadmissibility under section 212(i) of the Act based on the hardship her qualifying relative, her U.S. citizen husband, would undergo if she were denied admission, due to the fact that he is in his eighties and has health conditions that require her care. The Director found that the evidence provided with the Form I-601 application did not suffice to establish that the Applicant's husband had any medical conditions that would cause him extreme hardship in the event of the Applicant's removal from the United States, and further found that the Applicant had three adult children in the United States who could possibly assist with his care.

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. 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. The applicant may meet this burden by submitting a statement from the qualifying relative(s)

---

[5] *See Kassab v. INS*, 364 F.2d 806 (6th Cir. 1966) (Noncitizen who stated in visa application that he was married, that he and his wife had the same address, and that he was "destined to" her at that address, committed material misrepresentation by failing to disclose that she had filed for an annulment and that they did not live together, despite stating he believed in good faith he was still married since the annulment wasn't final.)

certifying under penalty of perjury that the qualifying relative(s) would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. *See generally* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda. In the present case, the record does not specify whether the Applicant's husband would remain in the United States or relocate to Dominica if the Applicant's waiver application is denied. The Applicant must therefore establish that if her waiver application is denied, her husband would experience extreme hardship both upon separation and relocation.

Although we are sympathetic to his circumstances, we conclude that the record is insufficient to establish that the Applicant's husband would experience extreme hardship if he were to stay in the United States without the Applicant.

On appeal, the Applicant states: "I've been by [my husband's] side for more than a decade, and his adult children have not been there to help with medical assistance or decision-making with all the health issues he has had during that time," and names various instances when she provided care for her husband while his children "were all too preoccupied with their own life to take on the responsibility of caring for their elderly father." She further states that her husband has diabetes, "chronic kidney diseases stage III complications," an "age-related nuclear cataract," presbyopia, hematuria, persistent low back pain, hearing loss, "and other active medical conditions."

The appeal also includes an August 2021 affidavit from the Applicant's husband. He states that he has not seen his first daughter or his son since New Year's Day 2020 and that they would not care for him if his wife was not present. He further states that he has not heard from his younger daughter in a year and that he did not hear from her often even when she and her son lived in the same apartment building as him and the Applicant, so he also does not believe she would care for his health in the absence of his wife.

While the brief submitted on appeal emphasizes the Applicant's husband's advanced age and the hardship he would undergo if he were to move to Dominica,[6] the evidence provided does not sufficiently establish that he would undergo extreme hardship if he were to stay in the United States. While we acknowledge the evidence that his children would not provide care for him if the Applicant were removed,[7] the record lacks the specificity and detail needed to establish that his age and medical conditions would cause him extreme hardship in the Applicant's absence.

The medical records provided indicate that the Applicant's husband has diabetes, stage III chronic kidney disease, hearing and vision loss, an enlarged prostate, high blood pressure, and chronic back pain. They also indicate that he had surgery in 2015. However, these records, as well as the other medical records on record, do not specify what medical hardship he would undergo without the Applicant's presence. The brief provided on appeal states that he relies on the Applicant for food shopping and preparation and that she accompanies him to doctor's visits, and that it is "not reasonable to expect him to live on his own without his wife's care and assistance." The Applicant's affidavit

---

[6] Because the failure to establish extreme hardship upon separation is dispositive in this case, we need not address the relocation scenario and hereby reserve the issue. *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").

[7] It is noted that the medical records provided indicate that the Applicant's husband has ready access to medical care, and the Applicant does not discuss the possibility of a home health aide or other caretakers apart from her husband's children.

similarly states that she cooks special meals for her husband due to his diabetes and ensures that he exercises. The record does not establish that in the Applicant's absence, her husband, who lives in [redacted] would be unable to obtain diabetes-appropriate meals or exercise, or that he would be unable to travel to his medical appointments.

We acknowledge that the Applicant's husband is in his eighties and has chronic health conditions. We further acknowledge the long and loving relationship between the Applicant and her husband, and the emotional hardship that the latter will experience in the absence of his wife. However, the evidence in the record, considered both individually and in the aggregate, does not contain the detail and specificity necessary to establish that her spouse's hardships would go beyond the common results of removal and rise to the level of "extreme," as required under section 212(i) of the Act.

III. CONCLUSION

The Applicant is inadmissible for willful misrepresentation of a material fact under section 212(a)(6)(C)(i) of the Act. As noted above, in order to receive a waiver of this inadmissibility under section 212(i) of the Act, the Applicant must establish that denial of the waiver application would result in extreme hardship to her husband both upon separation and upon relocation to Dominica. As the Applicant has not established extreme hardship to her husband in the event of separation, we cannot conclude that she has met this requirement.

Because the Applicant has not demonstrated extreme hardship to a qualifying relative if she is denied admission, we need not consider whether she merits a waiver in the exercise of discretion. *See INS v. Bagamasbad*, 429 U.S. at 25. The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.