U.S. Citizenship and Immigration Services

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

In Re: 26685403

Date: DEC. 13, 2024

Appeal of New Orleans, Louisiana Field Office Decision

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

The Applicant, a native and citizen of Laos, seeks to adjust status to that of a lawful permanent resident (LPR), which requires her to demonstrate, among other things, that she is admissible to this country or eligible for a waiver of inadmissibility. Section 245(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(a)(2). The Applicant was found inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), and she seeks a discretionary waiver of inadmissibility under section 212(i) of the Act.

The Director of the New Orleans, Louisiana Field Office, denied the waiver request, concluding that the evidence did not establish the requisite hardship to the Applicant's only qualifying relative, her U.S. citizen spouse, if the Applicant is refused admission. On appeal, she submits a brief along with documents already contained in the record. The Applicant maintains that she is not inadmissible for fraud or willful misrepresentation. Alternatively, she asserts that she is eligible for a section 212(i) waiver because the evidence establishes that her spouse would experience extreme hardship if the waiver request is denied. 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 dismiss the appeal.

## 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. This inadmissibility ground may be waived if refusal of admission would result in extreme hardship to the U.S. citizen or LPR spouse or parent of the noncitizen. Section 212(i) of the Act. If the noncitizen establishes the requisite hardship, they must also demonstrate that their waiver request warrants a favorable exercise of discretion. *Id.*

Whether a 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). While some degree of hardship to qualifying relatives is present in most cases, the hardship must exceed that which is usual or expected for it to be considered "extreme." *See, e.g.*, *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). The Applicant has the burden of proof to establish eligibility for the requested benefit 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).

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/policymanual (providing guidance on the scenarios to consider in making extreme hardship determinations). Establishing extreme hardship under both these scenarios is not required if the evidence shows 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 Gonzalez Recinas*, 23 I&N Dec. 467 (BIA 2002)). The applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that they would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. *See id.* Here, the Applicant's qualifying relative, her U.S. citizen spouse, did not clearly indicate in his statement that he intends to remain in this country or relocate to Laos if the waiver request is denied. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship both upon separation and relocation.

## I. ANALYSIS

As an initial matter, the Applicant asserts that she is not inadmissible for fraud or willful misrepresentation. We disagree. As noted in the Director's decision, the record contains specific evidence that she attempted to evade U.S. immigration laws during her 2014 K-1 nonimmigrant visa application process based on a Form I-129F, Petition for Alien Fiancé(e), her ex-fiancé filed for her, which U.S. Immigration and Citizenship Services (USCIS) initially approved. But during her subsequent overseas K-1 visa interview with a U.S. Department of State (DOS) consular officer, she provided inconsistent sworn accounts about her then claimed relationship with the ex-fiancé that were unknown to USCIS when the underlying petition was approved. Specifically, although the ex-fiancé stated that he was first introduced to her in June 2012 by a male cousin and his wife, the Applicant swore under oath before the consular officer she was first introduced to her ex-fiancé in June 2013 by her sister and confirmed that she did not know him before 2013. These statements further contradicted her own assertion contained in a marriage application she submitted to a mayor's office in Laos, attesting that she has known her ex-fiancé since 2012. She also could not share any details about her ex-fiancé during the visa interview and ultimately told the consular officer that she had no intent to marry or live with him. Based on this evidence, the consular officer concluded that the Applicant's relationship with her then claimed fiancé existed solely to circumvent the U.S. immigration laws; refused her K-1 visa; and recommended that the previously approved fiancé petition be revoked.[1]

The Applicant contends that the alleged misrepresentation pertaining to her K-1 visa application involving the ex-fiancé was not "willful" or "material. The term "willful," contrary to her assertion, does not require a specific intent to deceive. *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); 8 *USCIS Policy Manual* J.3(D), https://www.uscis.gov/policymanual. Although the Applicant asserts that an agency helped her and she did not understand the process or legal requirements of a K-1 visa,

[1] USCIS subsequently rescinded its prior approval of the underlying fiancé petition and administratively closed the matter.

she signed the visa application certifying that she has read and understood the questions and her answers were true and correct, which establishes a strong presumption that she knew and assented to the contents of her visa application explicitly listing her ex-fiancé and purpose of seeking the visa as his fiancée. *See Matter of A.J. Valdez*, 27 I&N Dec. 496, 499 (BIA 2018). She has not rebutted this presumption through evidence that she was misled and deceived when preparing her visa application based on the underlying fiancé petition, *id.*, or that she was incapable of exercising her own judgment.

Further, the misrepresentation was "material." A misrepresentation is a false representation of a fact that is *relevant* to one's eligibility for an immigration benefit. 8 *USCIS Policy Manual* J.3(E). 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). Applicants must show that any line of inquiry shut off by the misrepresentation was irrelevant to the original eligibility finding. *See* 8 *USCIS Policy Manual,* J.3(E)(4). The Applicant argues that the alleged misrepresentation was either irrelevant or nonexistent, and thus not "material," because DOS approved her second (2016) fiancé petition her current spouse filed for her when they were engaged and also approved the related K-1 visa request, despite the derogatory evidence pertaining to her first K-1 visa application and the underlying petition involving the ex-fiancé.[2] But the Applicant's inconsistent sworn statements to the consular officer as to when and how she first met her ex-fiancé; her inability to provide any detail about him; and admission that she had no intent to marry or reside with him were central and contrary to her initial representation that she was genuinely engaged to marry her ex-fiancé, based on which the fiancé petition was filed for purposes of obtaining a K-1 visa. Given that the sworn accounts that went to the heart of her claimed relationship with the ex-fiancé were directly relevant and contrary to the U.S. immigration laws for the benefits she sought to obtain through the K-1 visa process (which require a bona fide intention to marry and actual willingness to conclude a valid marriage within 90 days of entry, under section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1), and relevant regulations), the misrepresentation was "material" under section 212(a)(6)(C)(i) of the Act. The Applicant's assertions and evidence do not convince us otherwise.

We also disagree with the Applicant that if she truthfully informed the consular officer that she had no intent of marrying her ex-fiancé during the 2014 visa interview, that admission was a timely retraction of any prior representation that she was genuinely engaged and intended to marry him. The record contains no evidence, and her assertions do not persuade us, that she voluntarily retracted without delay any misrepresentations or timely attempted to withdraw her K-1 visa application. Rather, the record shows she pursued it until the consular officer confronted her with the noted inconsistencies and then admitted to having no intent to marry her ex-fiancé. *See Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (stating that "we have consistently held that the recantation must be voluntary and without delay" and concluding that a retraction made after it appeared that the disclosure of the falsity of the statements was imminent was neither voluntary nor timely); *see also* 8 *USCIS Policy Manual,* J.3(D)(6) ("Admitting to the false representation after USCIS has challenged

[2] USCIS approved the second fiancé petition in December 2017, and DOS issued a K-1 nonimmigrant visa to the Applicant. She subsequently entered the United States as a K-1 fiancée in June 2018, married her current spouse, and filed her first adjustment application in July 2018, which the Director the Montgomery, Alabama Field Office, denied because she was found to be inadmissible for fraud or willful misrepresentation due to the noted derogatory evidence arising from her 2014 K-1 visa interview. She was given a notice of her right to seek a motion review of the denied adjustment application, but did not pursue a motion. Instead, she filed a second adjustment application with the instant waiver request.

the veracity of the claim is not a timely retraction."); *Matter of R-R-*, 3 I&N Dec. 823, 827 (BIA 1949). Accordingly, we conclude that the Applicant is inadmissible under section 212(a)(6)(C)(i) for seeking an immigration benefit through fraud or willful misrepresentation and requires a waiver of this inadmissibility ground. Further, we note that she does not specifically dispute the Director's finding that DOS also initially found her inadmissible, as she was living abroad at the time of her 2014 K-1 visa interview and the record contained stated evidence of a material misrepresentation during her visa application process. Assuming DOS made the final determination of admissibility and visa eligibility, we may consider only whether the Applicant qualifies for a waiver of his inadmissibility.[3]

Turning to the issue of extreme hardship to the Applicant's U.S. citizen spouse, the Director found that the evidence did not establish that he would experience extreme hardship if the Applicant is denied admission. The record contains, among other documents, the couple's statements; the spouse's medical documents, including a 2022 mental health report; a joint letter from two adult stepchildren; a friend's letter; financial documents, including bank statements, employment and tax documents, and bills; family photographs; and country conditions reports on Laos. On appeal, she alleges that the Director failed to properly consider all relevant evidence, and reasserts that if she is denied admission, her spouse would suffer extreme hardship due to medical, financial, and emotional difficulties.

The Applicant, who is now 41 years of age, married her 60-year-old spouse in 2018. They live in [redacted] Louisiana, and own a home with a mortgage. The spouse, also of Laotian descent, came to this country at age 18 and became a U.S. citizen at age 31. He continues to work as a welder, and the Applicant currently does not work. Her two U.S. citizen adult stepsons (37 and 32 years old, respectively) live in Alabama. A 2022 psychological report states the spouse has "Moderately Severe Depression," "Generalized Anxiety Disorder," and "Major Depressive Disorder." He also has arthritis, anemia, and shortness of breath. He takes medications for his joint pains and continues to use his inhaler. The couple avers that the spouse relies on the Applicant's daily care and help, and if she is denied admission, he would suffer greatly in part due to his medical conditions and potential financial difficulties, including having to cover all their expenses by himself by working overtime. They also assert that there is no work opportunity or quality healthcare in Laos and it is unsafe there.

The Applicant has not established the requisite extreme hardship to her spouse upon separation. We acknowledge the claimed emotional, psychological, and physical hardships to her spouse, including his diagnoses of the stated medical conditions and related treatment in part due to his experiences of having fled Laos, later going through a divorce with his former wife, and working long hours. But the record lacks evidence showing the extent to which he relies on the Applicant for emotional or physical support and care in getting treatment, managing his medical conditions, and maintaining his health. Aside from general assertions of emotional hardship upon separation arising from the stated medical conditions, the record also does not establish the severity or frequency of his current conditions and related symptoms and that they adversely affect his ability to perform daily tasks and work

[3] Contrary to the Applicant's appeal assertions, DOS was not mandated to either explicitly find her inadmissible or deny the 2014 K-1 visa application due to inadmissibility, as her K-1 visa was refused based on the derogatory evidence that also rendered her substantively ineligible for it and she ultimately no longer had an approved fiancé petition—or require a waiver of inadmissibility for her 2016 fiancé petition and K-1 visa application, the bona fide nature of which is not at issue. Even without a DOS inadmissibility finding, USCIS is not precluded from making its own inadmissibility finding, as was done in the denial of her prior adjustment application. Although she was not given a chance to submit a waiver request before that application was denied, as noted, she waived her right to raise that concern, and had an ample opportunity to address her inadmissibility through her subsequent filings, including the instant waiver application.

responsibilities, such that he requires the Applicant's presence, assistance, and care (primarily for her companionship and household support), or show that they would be aggravated by separation. Further, he is able to obtain and had received treatment for his conditions. There is no indication that he would be unable to obtain treatment in the Applicant's absence. He also does not claim, and the record does not indicate, that he could not continue taking his medications on his own without the Applicant's help. Further, although the January 2022 psychological report specifically recommended him for additional mental health services, including individual counseling and therapy, along with optional medications, the record does not contain any evidence that he has in fact sought any additional treatment since then. He is also very close with his two adult sons, and the record does not show they could not provide him emotional and other help as needed in the Applicant's absence, even though they live in Alabama, and their statements indicate willingness to help their father.

As for the claimed financial hardship, while we acknowledge the couple would experience financial difficulties, the record does not support that they would exceed the common results of deportation and amount to extreme hardship. Although the couple claims the spouse would suffer severe financial hardship without the Applicant, the record lacks evidence of his financial reliance on the Applicant, as she admits having contributed only a small income when she was working and she currently does not work. The record also shows that the spouse is able to cover the necessary expenses, and he has been and continues to be the primary, if not the sole, income earner who has been earning over $85,000 a year at least since 2017, and recently over $100,000 a year, as a professional welder, according to the tax documents he submitted, and pays for the couple's medical insurance. The record also reflects that they may own two homes with respective mortgages, and it shows that he bought a brand new car in 2019 with an individual (who appears to be the Applicant's sister), and the bill for the $800 monthly car payment is sent to her. The record evidence therefore does not persuasively establish significant financial hardship if the waiver request is denied. *See Matter of Pilch*, 21 I&N Dec. at 630-31, 633 (holding that general economic and social disruptions do not support a finding of extreme hardship). The spouse also has many years of work experience, and the record does not indicate that he could not continue or would be unable to work in the Applicant's absence to support himself, and it lacks evidence for the claim that he will abruptly experience unusual financial difficulties. The record also does not indicate that the Applicant would be unable to obtain work and provide additional support to her spouse from Laos, if he needs financial assistance.[4]

We recognize the claim that living in Laos may be unsafe for her and severe economic disparity and low quality of life may exist there with limited job opportunities. But apart from these general assertions, neither the Applicant nor her spouse provides substantive information as to any specific claimed hardships to her in Laos that would in turn affect her spouse. While we acknowledge the claimed fears in Laos, the record, including the general country reports do not indicate individualized risk of harm or the claimed improbability of obtaining a job. Further, other than the time differences and the high cost of airplane tickets, she does not specifically claim, and the record lacks evidence, that her spouse would face unusual difficulties in visiting her in Laos, where he was born and raised and has visited her for two months when they were engaged and had an exceptionally memorable time. The remaining documents do not otherwise establish eligibility in the absence of probative evidence.

[4] According to her 2013 B1/B2 nonimmigrant visa application, she was working as a "saleswoman" for a supply shop at the time; in her 2014 K-1 visa application, she stated she was working in "business" for a photocopy shop; and in her 2016 K-1 visa application, she stated that she was unemployed and financially supported by her then fiancé (current spouse).

As stated, the Applicant must establish that her spouse would suffer extreme hardship over and above the normal economic, social, or other disruptions involved *both* upon separation and relocation to Laos as a result of her inadmissibility. The totality of the evidence of claimed hardships upon separation in the record here, considered individually and cumulatively, do not exceed the common results of separation due to deportation to constitute extreme hardship.[5] As the Applicant has not established such hardship in the event of separation, we cannot conclude that the requisite extreme hardship would result from denial of her waiver request. The waiver application therefore will remain denied.

**ORDER:** The appeal is dismissed.

[5] The Applicant also claims that her spouse may no longer be able to send money to her family in Laos, if her waiver request is denied. But the record lacks detail and evidence as to the claimed financial support he provides for her family (such as specific amount and frequency), and lacks explanation as to why the Applicant (while in Laos) and her spouse (from here) could not continue to support her family in Laos where she also has other family. Even if he could no longer send unspecified amount of money to the Applicant's family, whose claimed need for and reliance on it is also unspecified, she does not clarify how this difficulty specifically relates to her only qualifying relative's claimed hardships.