U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35427828

Date: DEC. 23, 2024

Appeal of Los Angeles, California Field Office Decision

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

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The Director of the Los Angeles County, California Field Office denied the application, concluding that the Applicant had not established extreme hardship to his U.S. citizen spouse, the only qualifying relative. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act.

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

The record establishes that the Applicant is a citizen of Nigeria and that he married his current spouse, a U.S. citizen, in [redacted] 2022. With the Form I-601, the Applicant submitted supporting affidavits, identity documents for the spouse and other relatives, a psychological evaluation for his spouse, country of origin information about Nigeria, and documents regarding the family's financial responsibilities. The record additionally contains documents related to the Applicant's divorce from his former spouse that he submitted with his adjustment of status application.

In denying the Form I-601, the Director determined that the Applicant was not eligible for a waiver under section 212(i) of the Act because he had not established extreme hardship to his U.S. citizen spouse. The Director acknowledged, among other hardship factors, the documentation regarding the spouse's mental health concerns, the death of the spouse's son, and evidence of the couple's financial obligations. However, the Director found that the evidence did not sufficiently establish that the spouse would experience extreme hardship if the Applicant's waiver is denied. The Director noted that the psychological evaluation submitted for the spouse did not indicate long-standing issues prior to the time period of the waiver application and that while the Applicant claimed his spouse had high blood pressure, there was no formal diagnosis of her health condition. The Director additionally concluded that the Applicant had not submitted sufficient evidence of the claimed hardship to the spouse if she relocates with him to Nigeria, specifically diminished economic opportunity and violence in all parts of the country.

On appeal, the Applicant submits a brief and contends that he is not inadmissible for fraud or willful misrepresentation and, in the alternative, that he has established eligibility for the waiver based on extreme hardship to his spouse.

A. Inadmissibility

The Applicant renews claims on appeal that he is not inadmissible because he did not willfully misrepresent a material fact. The Applicant was found inadmissible for indicating on his nonimmigrant visa application, filed [redacted] 2020, that he was married and had a child, when he had in fact filed for divorce from his previous spouse the same day. In that visa application, the Applicant affirmed that he had previously been denied a visa to travel to the United States because he had not shown strong enough ties to his home country, which is consistent with government records. In his first visa application, he stated that he was single. The record indicates that the Applicant married his former spouse on [redacted] 2020, the day after his first visa was refused. On appeal, the Applicant renews claims he made before the Director that he divorced his former spouse because he learned that her child was not biologically his, which he did not divulge to the consular officer for personal and cultural reasons. He also argues that he was not asked about the state of his marriage at the time of his visa application, particularly whether he was in divorce proceedings. He finally argues there is no requirement that an individual be married or unmarried at a particular time.

To be issued a nonimmigrant visa to the United States, foreign nationals must overcome the statutory presumption found in section 214(b) of the Act, 8 U.S.C. § 1184(b), that they are intending immigrants. Therefore, in seeking nonimmigrant admission to the United States, a visa applicant must establish to the satisfaction of a U.S. Department of State (DOS) consular officer that they have no intention of abandoning their foreign residence. *See* 9 *Foreign Affairs Manual* 401.1-3(E), https://fam.state.gov/FAM/09FAM/09FAM040101.html. In determining whether visa applicants are entitled to temporary visitor classification, consular officers must assess whether the applicants have a residence in a foreign country, which they do not intend to abandon; intend to enter the United States for a limited duration; and seek admission for the sole purpose of engaging in legitimate activities relating to business or pleasure. If an applicant does not meet one or more of these criteria, the consular officer must refuse the visa. *Id.* at 402.2-2(B)(a). In this case, the Applicant's marital status was material to making a determination about whether he was an intending immigrant under section 214(b) of the Act, as evidenced by the fact that he was denied a nonimmigrant visa when he represented his marital status as single, and approved for one when he represented himself as married with a child approximately a month later.

A misrepresentation is "material" for purposes of inadmissibility under section 212(a)(6)(C)(i) of the Act 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). The applicant has the burden to demonstrate that any line of inquiry shut off by the misrepresentation was irrelevant to the original eligibility determination. *See Matter of S- and B-C-,* 9 I&N Dec. 436 (A.G. 1961); 8 *USCIS Policy Manual* J.3(E)(4), https://www.uscis.gov/policymanual. The term "willful" does not require a specific intent to deceive, but requires knowledge of falsity, as opposed an accidental statement or one that is made because of an honest mistake. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22 (BIA 1979); *Matter of G-G-,* 7 I&N Dec. 161 (BIA 1956), *superseded in part by Matter of Kai Hing Hui,* 15 I&N Dec. 288 (BIA 1975); 8 *USCIS Policy Manual, supra* at J.3(D).

Here, the record supports the Director's determination of the Applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act. In making a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act, there must be evidence showing that a reasonable person would find that an applicant used fraud or that he or she willfully misrepresented a material fact in an attempt to obtain a visa, other documentation, admission into the United States, or any other immigration benefit. 8 *USCIS Policy Manual* J.3(A)(1), https://www.uscis.gov/policymanual. The Applicant is correct that there is no requirement regarding the timing of an individual's marriage. We also note the Applicant's claim that the reason for his divorce from his former spouse was because his spouse's child was not biologically his. However, the Applicant has not explained why he represented himself as married on his second visa application when he filed for divorce the same day. The record, according to documents provided by the Applicant, reflects that the Applicant married his former spouse immediately after his first visa application was denied for a lack of ties to his home country. Approximately three weeks later, he initiated divorce proceedings from that spouse, the same day he filed his second visa application. Moreover, the record indicates that this marriage legally ended on [redacted] 2021, two weeks before he entered the United States on [redacted] 2021. This indicates that he was no longer married when he entered the United States, diminishing the ties to Nigeria he had demonstrated in his approved visa application. These facts and sequence of events, taken cumulatively, indicate that the Applicant

misrepresented his marital status in order to demonstrate ties to Nigeria, which he was aware he needed to do in order to procure a visa. The applicant has the burden of proving that he is admissible to the United States. Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not provided sufficient information or evidence to establish that he did not willfully misrepresent his marital status, and thus his ties to Nigeria, when applying for a nonimmigrant visa. Therefore, the Applicant has not met his burden of proof and we agree with the Director that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

B. Extreme Hardship

As stated, in order to establish eligibility for a waiver under section 212(i) of the Act, the Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or relatives, in this case her U.S. citizen spouse. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant or 2) if the qualifying relative relocates overseas with the applicant. Demonstrating extreme hardship under both scenarios is not required if an applicant's evidence establishes 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 certifying under penalty of perjury that the qualifying relative would relocate with the Applicant, or would remain in the United States, if the Applicant is denied admission. 9 *USCIS Policy Manual, supra,* at B.4(B). In the present case, the record does not contain a clear statement regarding whether the spouse would remain in the United States or relocate to Nigeria with the Applicant if he is denied admission. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship upon both separation and relocation.

On appeal, the Applicant contends that his spouse would experience extreme hardship in the event of their separation. He states that he provided psychological and financial support to his spouse, who is still grieving the loss of her only son in [redacted] 2022, and who is experiencing depression, anxiety, and post-traumatic stress disorder as documented in the submitted psychological evaluation. The Applicant argues that the Director minimized this hardship and the lifelong impact this has caused the spouse. He further notes that the spouse has undiagnosed high blood pressure and also takes care of her daughter and aging mother who experienced a stroke in June 2021. In her affidavit, the spouse states that she will not be able to care for her mother, along with her own health issues, without the help of the Applicant who has been invaluable in jointly managing the mother's needs with her. She contends that Applicant assists her mother with daily tasks, setting up her assistive devices, and taking her to medical appointments because she has not been able to drive since her stroke. The Applicant further claims that his spouse's daughter will experience hardship in his absence and that the Director erred in not considering this.[1] Turning to hardship related to relocation, the Applicant states that his spouse cannot relocate with him to Nigeria because medical care is inadequate and because it is a dangerous country according to U.S. Department of State warnings. In support of the appeal, the Applicant submits the following new evidence: a self-affidavit, an affidavit from the spouse, an affidavit from a friend of the spouse, information on mother-in-law's medical condition, recent

[1] The counsel-authored brief refers to "daughters" and the Applicant's affidavit refers to "our children." However, the spouse's affidavit refers to one daughter and one son and the record does not otherwise reflect that the Applicant has his own children. Furthermore, for the purposes of a waiver under section 212(i) of the Act, we may consider hardship to additional relatives only as it affects the qualifying relative.

financial documents, information related to the Applicant's application for a commercial driver's license, and country of origin information.

Upon de novo review of the record, the Applicant has not established the requisite extreme hardship to his spouse, the only qualifying relative, in the event of separation. The spouse's statement indicates that the Applicant is emotionally supportive of her. We recognize with the emotional hardship faced by the Applicant's family due to the death of his stepson as well as the care the Applicant and the spouse provide the spouse's mother. We also acknowledge the psychological evaluation in the record documenting the spouse's high blood pressure and her mental health diagnoses stemming from her concerns about the future if the Applicant's waiver is denied. However, the submitted evidence does not detail the effects of these difficulties on her ability to manage her daily life and meet her responsibilities such that they would cause her extreme hardship. We also note that while the psychological evaluation recommends that the spouse seek therapy to develop coping mechanisms, the record does not indicate whether she has sought or is receiving such treatment. Similarly, the Applicant's spouse contends that the Applicant assists her with caretaking responsibilities for her mother, and the counsel-authored brief indicates he is the mother's primary caretaker. However, the accompanying medical evidence submitted on appeal does not contain a plain language description from a treating physician of what level of assistance the spouse's mother currently requires. The affidavits do not detail whether the spouse has or could seek other sources of support or care arrangements for her mother. Regarding financial hardship, although the Applicant generally contends that his spouse needs his income to survive, the record is not clear regarding what financial contributions the Applicant currently makes or plans to make to support the spouse. The submitted evidence does not represent a complete picture of the couple's financial situation including all income, expenses, assets, and liabilities.

Although we acknowledge that the Applicant's spouse may experience some hardship if she were to remain in the United States while the Applicant relocates abroad, the totality of the evidence in the record is insufficient to establish that the Applicant's spouse's hardships, considered individually and cumulatively, would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship due to separation from the Applicant.

The Applicant must establish that denial of the waiver application would result in extreme hardship to a qualifying relative upon both separation and relocation. As the Applicant has not established extreme hardship to his qualifying relative in the event of separation, we cannot conclude he has met this requirement. As such, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion.

III. CONCLUSION

Accordingly, the Applicant does not meet the requirements for a waiver under section 212(i)(1) of the Act, and the appeal must be dismissed.

ORDER: The appeal is dismissed.