U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29505843

Date: JAN. 22, 2024

Appeal of Cincinnati, Ohio Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Ghana currently residing in the United States, has applied 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 fraud or misrepresentation and seeks a waiver of that inadmissibility. *See* 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 or qualifying relatives.

The Director of the Cincinnati, Ohio Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant did not establish that his qualifying relative, his U.S. citizen spouse, would experience extreme hardship if he were denied the waiver. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant submits additional evidence and contends that his U.S. citizen spouse would experience extreme hardship if his waiver were denied.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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. This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident (LPR) 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 issues on appeal are whether the record establishes that the Applicant is inadmissible for fraud or misrepresentation and if so, whether the Applicant has demonstrated his U.S. citizen spouse, his sole qualifying relative, would experience extreme hardship upon denial of the waiver.[1] In support of the waiver application, the Applicant submitted statements from himself and his qualifying relative spouse, medical records, tax records, family identification documentation, and country conditions information. On appeal, the Applicant submits a statement from his qualifying relative spouse, letters of support from his U.S. citizen daughter, his employer, and his church, and additional country conditions information.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible for fraud or willful misrepresentation specifically for making a material misrepresentation in an attempt to obtain entry into the United States, as described in the Director's decision. The record demonstrates that the Applicant presented a fraudulent passport to an immigration official in August 1993 in an attempt to enter the United States at a port of entry.

On appeal, the Applicant contends that he is not inadmissible for fraud or willful misrepresentation because he voluntarily admitted to the U.S. immigration officer that he presented a fraudulent U.S. passport in an attempt to gain entry to the United States as a U.S. citizen. The Applicant claims that he did not conceal information or wait for additional inspection before volunteering the information about the fraudulent U.S. passport. He asserts that he made a timely and voluntary retraction of the fraudulent U.S. passport and his U.S. citizen status.

An applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act if they timely and voluntarily retract the fraud or misrepresentation. *Matter of M-*, 9 I&N Dec. 118, 119 (BIA 1960) (holding that attempted fraud must be corrected "voluntarily and prior to any exposure"); *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (holding that where an alleged retraction "was not made until it appeared that the disclosure of the falsity of the statements was imminent[, it] is evident that the recantation was

[1] We note that the Director erroneously also considered the Applicant inadmissible pursuant to section 212(a)(6)(C)(ii)(I) of the Act and indicated that making a false claim to U.S. citizenship is not a waivable inadmissibility ground. However, section 212(a)(6)(C)(ii)(I) of the Act provides that a noncitizen who, on or after September 30, 1996, falsely represents, or has falsely represented, themselves to be a U.S. citizen for any purpose or benefit under the Act or any other Federal or State law is inadmissible. As the Applicant correctly indicates on appeal, because his claim to U.S. citizenship was prior to September 30, 1996, he may be considered for a waiver under section 212(i) of the Act.

neither voluntary nor timely"). The USCIS Policy Manual states that for a retraction to be effective, an applicant must correct his or her representation before being exposed by the officer or U.S. government official or before the conclusion of the proceeding during which he or she gave false testimony. 8 *USCIS Policy Manual* J.3(D)(6), https://www.uscis.gov/policymanual.

In the instant matter, the record indicates that the Applicant admitted to possessing the fraudulent U.S. passport and subsequently submitted his claimed Ghanaian valid passport to U.S. immigration officers. However, even if we were to agree that the Applicant timely retracted the fraudulent U.S. passport, he still presented a fraudulent Ghanaian passport indicating a different identity (name and date of birth) to U.S. immigration officers in an attempt to gain entry to the United States. In his attempt to enter the United States in 1993, the Applicant ultimately presented a Ghanaian passport in the name of E-F- with a date of birth in [redacted]1957, neither of which actually belonged to him. In an addendum to his Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), the Applicant explained that he "[p]resented [a] false passport at entry in 1993 [and was] placed in exclusion proceedings under the name [E-F-]" in response to question 65 pertaining to the misrepresentation of information for admission to the United States. Thus, the Applicant has recognized that he also presented a fraudulent Ghanaian passport under a different identity after retracting the fraudulent U.S. passport.[2]

In making a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act, there must be evidence in the record showing that a reasonable person would find that an applicant used fraud or that they 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.

A willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. *Parlak v. Holder*, 578 F.3d 457 (6th Cir. 2009). For a misrepresentation to be found willful, it must be determined that the applicant was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-,* 7 I&N Dec. 161 (BIA 1956). The misrepresentation must be made with knowledge of its falsity. *Id.* at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we "closely scrutinize the factual basis" of a finding of inadmissibility for fraud or misrepresentation because such a finding "perpetually bars an alien from admission." *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994); *Matter of Tijam,* 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979).

The record demonstrates that the Applicant willfully misrepresented his identity and presented a fraudulent Ghanaian passport after presenting and retracting a fraudulent U.S. passport in an attempt to gain entry to the United States. Consequently, the record establishes that the Applicant intentionally made a false representation of his identity and presented a fraudulent passport to gain admission to the United States. As such, the record establishes that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States by willful misrepresentation of a material fact.

[2] The Applicant does not acknowledge this passport or identity on appeal.

B. Extreme Hardship

In order to establish eligibility for a waiver pursuant to section 212(i) of the Act, the Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives, in this case his U.S. citizen spouse. Section 212(i) of the Act. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relatives remain in the United States separated from the applicant and 2) if the qualifying relatives relocate overseas with the applicant. *See* 9 *USCIS Policy Manual, supra* at B.4(B) (providing, as guidance, the scenarios to consider in making extreme hardship determinations). 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. *See id.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of 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 the qualifying relative would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. *See id.* In the present case, the Applicant's spouse does not clarify whether she intends to remain in the United States or relocate to Ghana if the Applicant's waiver application is denied.[3] Therefore, the Applicant must establish that if he is denied admission, his qualifying relative would experience extreme hardship both upon separation and relocation.

With the waiver application, the Applicant submitted statements from himself[4] and his qualifying relative spouse. He also submitted copies of his spouse's medical records, his own tax records from the Internal Revenue Service from 2010 to 2018, family identification documentation, and country conditions information for Ghana.

In denying the waiver application, the Director outlined and detailed all of the evidence submitted by the Applicant and determined that it was not sufficient to establish that his spouse would experience hardship that rises to the level of "extreme," as required.

On appeal, the Applicant submits additional evidence and asserts that the record contains ample evidence of the extreme hardship his qualifying relative spouse would suffer if she became separated from the Applicant or relocated to Ghana following him. The Applicant submits a new statement from his qualifying relative spouse; letters of support from his U.S. citizen daughter, his employer, and his church; and additional country conditions information relating to healthcare and age discrimination in Ghana. The Applicant contends that his spouse would experience medical, financial, economic, physical, and psychological hardships if his waiver application is not approved. The Applicant asserts that his spouse's U.S. citizen daughter and two grandchildren would also suffer upon separation. We may consider the hardship to the Applicant's step-daughter and grandchildren only as it affects his qualifying relative spouse. *See* 9 *USCIS Policy Manual*, *supra*, at B.4(D)(2).

Our review indicates that the Director properly considered all the relevant evidence of extreme hardship upon separation in the aggregate in concluding that the extreme hardship requirement was

[3] The Applicant's spouse provides statements relating to both separation and relocation.

[4] The Applicant's statement solely addresses his use of an alias in the record and does not discuss extreme hardship to his qualifying relative spouse.

not met. Further, contrary to the Applicant's assertions, the record before us, including the evidence on appeal, does not establish that the Applicant's spouse would experience extreme hardship upon separation. In her statements before the Director and on appeal, the Applicant's spouse states that she has been married to the Applicant for over 20 years and she does not want to lose him if his waiver application is denied. She notes that she has custody of her two grandchildren, ages six and nine (on appeal), and they have been living with her and the Applicant since they were born. She states that they would be emotionally scarred if the Applicant had to leave the United States. His spouse explains that the Applicant "has been helping [her] with the bills and all the things [they] need to live" and without his help, they might end up on welfare and food stamps, or she would have to get another job at 70-years-old. She explains that her health "is getting bad" as she has diabetes that requires insulin, depression, high blood pressure, arthritis in her left leg, corneal degeneration, and she recently lost sight in her right eye. She further states that because of her blindness in the right eye, she can no longer drive at night and the Applicant is the one who drives her around or runs any necessary errands at night. She indicates that the Applicant is the backbone of their family, and she cannot see her life without him; if his waiver application is denied, it will risk her family's personal safety, health, and future opportunities.

Additionally, in the record before the Director, the Applicant explained, through Counsel, that their financial situation is already weak and will worsen if the waiver application is denied. He indicated that he receives monthly social security payments of $1,355, works as a delivery driver, his qualifying relative spouse works as a teacher at a preschool, and their household monthly expenses amount to $2,570. He mentioned that his qualifying relative spouse would suffer extreme financial hardship without him and will be unable to pay the monthly household expenses on her own. He further noted that his qualifying relative spouse suffers from multiple serious medical conditions, including severe depression, which adds to her extreme medical and psychological hardships.

Although we are sympathetic to the family's circumstances and do not diminish the emotional and medical hardships to the spouse upon separation, the Applicant has not established that the claimed hardship as described would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Likewise, we acknowledge the qualifying relative spouse's statement on appeal that she is now blind in her right eye and unable to drive at night; however, the record does not include, and the Applicant does not present on appeal, evidence of this medical condition and any related symptoms, her prognoses, any prescribed treatments, and the need, if any, for the Applicant's assistance in managing her medical care or her daily life.

Further, in the decision, the Director specifically advised the Applicant that the record lacks evidence in support of his qualifying relative spouse's assertions that she would suffer extreme financial, medical, and psychological hardships. However, on appeal, the Applicant still does not submit any evidence to support the hardship claims. In reference to the medical hardship, the Applicant's qualifying relative spouse indicates in her statements that she suffers from multiple serious medical conditions, yet the Applicant has not submitted evidence to demonstrate that she is receiving treatment or has been placed on an ongoing treatment plan for the stated medical conditions. In reference to the financial hardship, she stated that she and the Applicant both work and she would be unable to pay the monthly household expenses on her own, yet the Applicant has not submitted evidence of their income or their household expenses to show that a financial hardship may exist. The Applicant's qualifying relative spouse further indicates that she has custody of her two grandchildren, and currently monitors

her daughter's recovery and rehabilitation, yet the Applicant has not submitted evidence to show that she has custody of her grandchildren, or to show all of the care and support they both provide to those children, and how his qualifying relative spouse would suffer extreme hardship if his waiver application is denied and he is unable to continue to assist her in caring for those children. Accordingly, while we acknowledge the financial, medical, and psychological hardships claimed by his qualifying relative spouse, the Applicant has not established that such hardship to his spouse upon separation would rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

Furthermore, even considering all of the evidence in its totality, the record remains insufficient to show that the Applicant's spouse's claimed financial, medical, and psychological hardships would be unique or atypical, rising to the level of extreme hardship, if she remains in the United States while the Applicant returns to live abroad due to his inadmissibility.

As noted above, because the Applicant's spouse does not clarify whether she intends to remain in the United States or relocate to Ghana if the Applicant's waiver application is denied, the Applicant must establish that denial of the waiver application would result in extreme hardship to his spouse both upon separation and relocation to Ghana. As the Applicant has not established extreme hardship to his spouse in the event of separation, we cannot conclude he has met this requirement. Because the Applicant has not demonstrated extreme hardship to a qualifying relative if he is denied admission, we need not consider whether he merits a waiver in the exercise of discretion. The waiver application will therefore remain denied.

III. CONCLUSION

For the foregoing reasons, upon consideration of the record in its entirety, the Applicant has not established by a preponderance of the evidence that denial of the waiver application would result in extreme hardship to his qualifying relative spouse upon separation. He therefore has not established his eligibility for a waiver of inadmissibility under section 212(i) of the Act.

ORDER: The appeal is dismissed.