U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22874746

Date: OCT. 18, 2022

Appeal of Santa Ana Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident (LPR) and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for fraud and misrepresentation of a material fact. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The Santa Ana Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility. The Director concluded the Applicant did not establish extreme hardship to their U.S. citizen parent, her only qualifying relative.

On appeal, the Applicant submits a brief and additional evidence advancing their eligibility claims. The Applicant contests that she is inadmissible under the stated ground, and even if she is inadmissible, she claims she has demonstrated extreme hardship to her qualifying relative. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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

A foreign national 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 ground if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the foreign national. Section 212(i) of the Act. If the foreign national demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

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).

Once the foreign national demonstrates the requisite extreme hardship, they must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N 296, 299 (BIA 1996).

II. ANALYSIS

A. Background

As the Director noted, the Applicant applied for a nonimmigrant visitor's visa and in 2016 the U.S. Embassy in Monterey, Mexico interviewed her. Both during the interviewing and on the visa application, the Applicant claimed that no one had ever filed an immigration petition on her behalf. In fact, in 1990 her father filed a Form I-130, Petition for Alien Relative for her, that petition was approved, and the Applicant was waiting for a visa to become available to allow her to attain LPR status either through consular processing or through adjustment of status. The Director specifically stated:

> By testifying that no one had ever filed a petition on your behalf with USCIS, you sought to procure a benefit under the United States Immigration Laws by fraud and willful[] misrepresentation of a material fact, intending to deceive a United States government official (the Consular officer) to believe and act upon by granting the benefit or in this case the visa. In other words, you withheld information and misrepresented yourself in order to secure the B-2 visa with an intention of remaining in the United States, until your visa became available to adjust status.

Based on that nonimmigrant visa application, the Applicant was issued a border crossing card as a B-1/B-2 nonimmigrant visitor. She utilized that document to gain admission to the United States on at least one occasion in 2017 through the port of entry at the [redacted] Based on this information, the Director determined the Applicant was inadmissible under section 212(a)(6)(C)(i) for fraud and for misrepresenting a material fact on her visa application and during her interview. Although the Director did not specify, the Applicant likely committed those same acts when she presented herself to an immigration officer at the port of entry in 2017. The Director subsequently denied the Applicant's waiver application determining she did not demonstrate the

requisite level of hardship her father would experience if she were denied admission to the United States as an LPR.

Now on appeal, the Applicant contests the determination that she is inadmissible for fraud or willful misrepresentation of a material fact, and alternatively argues that if she is inadmissible, she demonstrated the requisite hardship to her qualifying relative.

B. Admissibility

Inadmissibility based on fraud requires a finding that a person knowingly made a false representation of a material fact with the intent to deceive the other party. *Matter of Tijam*, 22 I&N Dec. 408, 424 (BIA 1998). The presence of all of the following elements demonstrates that a foreign national is inadmissible under the Act as one who misrepresented a material fact:

- The person procured, or sought to procure, a benefit under U.S. immigration laws;
- The person made a false representation;
- The false representation was willfully made;
- The false representation was material; and
- The false representation was made to a U.S. government official, generally an immigration or consular officer.

8 *USCIS Policy Manual* J.2(B), https://www.uscis.gov/policymanual. *See also Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994); *Matter of Mensah*, 28 I&N Dec. 288, 293 (BIA 2021); *Tijam*, 22 I&N Dec. at 424. The Applicant claims that at the time she applied for the visa and at the time of her interview, that she was estranged from her father and they did not have a relationship. She also claims she solicited the services of an agency to process her nonimmigrant visa application and that agency never asked if she was the beneficiary of any immigrant petition filing before USCIS.

Regarding the Applicant's claim that she had no knowledge of the misrepresentation in connection to the nonimmigrant visa application, by signing the application, she certified under penalty of perjury that the application and all evidence submitted with it, either at the time of filing or thereafter, were true and correct. *See* 28 U.S.C. § 1746; 18 U.S.C. § 1621. That the Applicant did not apprise herself of what was submitted in support of her own application constitutes deliberate avoidance and does not absolve her of responsibility for the content of her application or the materials submitted in support of it. *See Thompson v. Lynch*, 788 F.3d 638, 647 (6th Cir. 2015) (citing *Haskins v. Prudential Ins. Co. of Am.*, 230 F.3d 231, 239 (6th Cir. 2000)); *Hanna v. Gonzales*, 128 F. App'x 478, 480 (6th Cir. 2005) (finding that an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application's contents).

Further, a foreign national's signature on an immigration application establishes a strong presumption that they know of and have assented to the contents of the application—to include the supporting documents—but they can rebut such a presumption by establishing fraud, deceit, or other wrongful acts by another person. *Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018) (citing *Thompson*, 788

F.3d at 647). The Applicant here has not overcome this presumption with their statement denying culpability.

Even if the record does not establish the Applicant held an intent to deceive a U.S. State Department official to constitute a fraud charge, we conclude that it is more likely than not that she misrepresented a material fact through the submission of a nonimmigrant visa application in violation of section 212(a)(6)(C)(i), and she has not established her admissibility clearly and beyond doubt. *Matter of Bett*, 26 I&N Dec. 437, 440 (BIA 2014) ("an applicant has the burden to show that [they are] clearly and beyond doubt entitled to be admitted to the United States and [are] not inadmissible under section 212(a) of the Act.") (citations omitted). We therefore conclude the Applicant requires an approved waiver to overcome this inadmissibility ground.

C. Extreme Hardship

On appeal, while the Applicant does contest the Director's determination that she did not establish her father would experience extreme hardship, she offers few arguments explaining why. The Applicant begins by stating the Director relied too heavily on the fact that she does not frequently see her father, but they do speak on the telephone daily. The Applicant understood the Director to mean that the lack of in-person contact "as signifying a lack of extreme hardship."

We do not agree with the Applicant's understanding. The Director discussed the amount of contact between the Applicant and her father in the context of discrepant information in the record. The Director noted the Applicant's counsel offered a declaration that the Applicant "is constantly by his side at his appointments and provides him constant reminders to take his medication as prescribed" and the Applicant's father "relies on his daughter to assist him with living since he has a reduced income." The Director noted a lack of evidence to corroborate those claims of financial assistance or that she is constantly assisting him in person. Further, the Director noted that on the date of the Applicant's interview, she and her father provided testimony indicating that they do not see each other in person frequently but they do talk on the telephone on a daily basis. Even though the Director noted these inconsistent claims within the wavier application denial (e.g., she is constantly by his side versus they do not see each other frequently in person), the Applicant does not attempt to resolve them on appeal.

Within the appeal, the Applicant also states the Director failed to account for the qualifying relative's testimony he provided during the interview in which he became distraught and began sobbing and had trouble breathing. The Applicant's father explained the importance of the daily communication between he and his daughter and having a close relationship with her because his home life does not provide emotional support for him.

First, the Applicant has not explained why she would be unable to maintain daily phone calls with her father in the event she is separated from him and returned to Mexico. Second, even though the Director noted a lack of adequate evidence regarding her father's physical and mental health, she does not identify or offer any additional evidence on appeal relating to these claims. The Director noted her father was diagnosed with hypertension, and back pain, but was otherwise in good health. Third, it is understandable that the Applicant's father became emotional during the interview with the USCIS officer when faced with the prospect that she might be removed from the United States. However,

such emotional adversity is but one of the expected results when a family member is removed from the country, and we reiterate that to be considered "extreme," the hardship must exceed that which is usual or expected. *See Pilch*, 21 I&N Dec. at 630–31.

Next, the Applicant raises the issue that the Director did not discuss one of the affidavits in the record. When USCIS provides a reasoned consideration to an application, and has made adequate findings, it will not be required to specifically address each claim an applicant makes, nor is it necessary for it to address every piece of evidence they present. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993). Although the appeal brief quotes from this affidavit, the Applicant does not explain why the Director's lack of analysis for this particular affidavit should be considered as an error, or as an omission that may have turned the tide and resulted in a finding that she established extreme hardship to her father. If this particular affidavit garners such importance, it is the Applicant's burden to explain its salience.

Finally, the Applicant also notes the Director did not perform a totality of the circumstances analysis of her hardship claims. We agree the Director should have cumulatively considered the hardships the Applicant and her father claimed in accordance with *Ige*, 20 I&N Dec. at 882. Still, while we acknowledge that error, on appeal the Applicant has not explained how the totality of the hardship her father might experience would change the Director's decision from an adverse outcome to a positive one. Because the Applicant has not identified how this error on the Director's part impacted the outcome of her case, it appears to be of a harmless nature. The Applicant has not demonstrated that she was prejudiced by the Director's error and that is not enough to prevail in this appeal. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009); *Molina-Martinez v. United States*, 578 U.S. 189, 203 (2016).

Furthermore, even considering the totality of this filing, we conclude the emotional, physical, and financial hardships to the Applicant's father—when considered in the aggregate—are those that are expected, and she has not demonstrated these hardships rise to the requisite level of extreme. *See Pilch*, 21 I&N Dec. at 630–31. Although we sympathize with the difficulties it appears the Applicant and her father will experience, she has not satisfied the mandatory standard required in this case.

ORDER: The appeal is dismissed.