



**U.S. Citizenship
and Immigration
Services**

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

In Re: 27391617

Date: OCT. 2, 2023

Appeal of the Chicago, Illinois Field Office Decision

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

The Applicant, a native and citizen of Serbia 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 relatives.

The Director of the Chicago, Illinois Field Office denied the application, concluding that the record did not establish that his spouse would experience extreme hardship upon denial of admission to the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant argues that he is not inadmissible and has not been made aware of the misrepresentation he is meant to have made. In the alternative, the Applicant argues that he has provided sufficient evidence of extreme hardship to his U.S. citizen spouse.

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 withdraw the Director’s decision and remand the matter for further consideration consistent with the following analysis.

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. Fraud consists of “false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party. The representation must be believed and acted upon by the party deceived to his disadvantage.” *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). 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).

According to the Applicant’s statement, he entered the United States in 2012 with a P3 visa to perform with a Serbian band as a pianist. After working with them for 7 or 8 concerts, the company told him they could no longer afford to pay him. At that time, he decided to remain in the United States rather than return to Serbia. The Applicant married his current spouse, C-M-, in 2018 and applied to adjust status based on being the spouse of a U.S. citizen. Following his interview at the Chicago Field Office, the Director issued a request for evidence (RFE) stating that the Applicant had misrepresented information on his P3 visa application. In response, the Applicant filed the current waiver application and supporting evidence. Despite the Applicant’s testimony to the contrary, the Director determined that the applicant had used the services of a smuggler and a passport that did not belong to him to enter the United States. The Director also denied the waiver request after determining that the Applicant had not established extreme hardship to his U.S. citizen spouse.

On appeal, the Applicant asserts that the inadmissibility determination of the Director is not supported by the record and in the alternative, that his spouse would experience extreme hardship if he were denied admission to the United States. The Applicant argues that the Director has not provided any specific instance of misrepresentation on the P3 visa application and the stated inadmissibility in the Director’s decision is not consistent with the facts of the case. The Applicant states that he has never used a false passport or the services of a smuggler and that any misrepresentation on his P3 visa application was inadvertent.

Upon de novo review, the Director has not sufficiently explained the basis for their finding of inadmissibility. When denying an application, the Director must fully explain the reasons for denial to allow the Petitioner a fair opportunity to contest the decision and provide us an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). The regulation at 8 C.F.R. § 103.3(a)(1)(i) states that when denying an application, the Director shall explain in writing the specific reasons for denial.

Therefore, we will withdraw the Director’s decision and remand the matter to the Director to issue a new decision that explains the basis of the Director’s inadmissibility determination so that the Applicant fully understands the Director’s conclusion.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision, which if adverse, shall be certified to the AAO for review.