U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24844980

Date: JUNE 16, 2023

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, who claims to be a native and citizen of Japan, and is currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). 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 Los Angeles, California Field Office denied the application, concluding that the record did not establish that the Applicant's U.S. citizen spouse, his only qualifying relative, would experience extreme hardship upon relocation to Japan, as she contends, if the waiver was not granted. The Director also concluded that even if the Applicant's spouse would experience extreme hardship upon her relocation to Japan, the Applicant did not merit a favorable exercise of discretion. The matter is now before us on appeal. 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 issues on appeal are whether the Applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act on the grounds identified by the Director, and if so, whether he has demonstrated that refusal of admission would cause extreme hardship to a qualifying relative. Specifically, the Director concluded that the Applicant made a willful misrepresentation of a material fact in order to obtain and maintain F-1 nonimmigrant student status in the United States, as described in the Director's decision. As a threshold matter, the Applicant disputes that he is inadmissible for fraud or willful misrepresentation of a material fact with respect to his status as an F-1 nonimmigrant student. Moreover, he asserts that even if he were inadmissible on this basis, then the Director erred in concluding that the Applicant is ineligible for a waiver based on a showing of extreme hardship to his U.S. citizen spouse because the Director did not consider the claims in the aggregate. Finally, the Applicant contends that he merits a favorable exercise of discretion.

For the reasons discussed below, we adopt and affirm the Director's decision that the Applicant is inadmissible and that he has not shown that his qualifying relative would be subjected to extreme hardship upon relocation if the Applicant were denied admission. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS,* 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS,* 87 F3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case.") Because the Applicant has not established extreme hardship to a qualifying relative, we need not reach the issue as to whether he has established that he merits a favorable exercise of discretion.

A. Inadmissibility

Section 212(a)(6)(C)(i) of the Act renders inadmissible any 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, admission into the United States, or other benefit provided under the Act.

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 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. In addition, the evidence must show that the person made the misrepresentation to an authorized official of the U.S. government, whether in person, in writing, or through other means. *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19

I&N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994).

The Applicant first entered the United States in April 2010 as an F-1 nonimmigrant student in order to study English as a Second Language (ESL) at Mentor Language Institute in California. Over the next 10 years, he changed schools and his course of study at least six times, each time seeking to document his continued status in the United States as an F-1 student through a enrollment in a full course of study at a Student and Exchange Visitor Program (SEVP)-approved school. 8 C.F.R. § 214.2(f)(5)(i) (an F-1 student must be pursuing a full course of study at an approved educational institution in order to maintain F-1 status.) In addition to updating the Applicant's approved course of studies in the Department of Homeland Security's Student and Visitor Exchange Visitor Information System database (SEVIS), a designated school official (DSO) at each school would provide him with a new Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, to use as evidence of his continuing F-1 student status.

In 2014, the Applicant transferred to [redacted] College ([redacted] school), where he was approved to pursue a full course of study. The record shows, and the Applicant does not dispute, that in February 2017, [redacted] the DSO for [redacted] school who signed the Applicant's Form I-20, pled guilty to conspiracy to commit immigration fraud and one count of immigration document fraud, after an investigation found that [redacted] had been in charge of a multi-school, "pay to stay" fraud scheme whereby purported students paid tuition fees to [redacted] school in order to have the school falsely maintain their F-1 student attendance records in SEVIS and issue Forms I-20 without requiring them to attend classes. In addition, when the Applicant was interviewed by USCIS in January 2021 in relation to his pending Form I-485 adjustment application, he was unable to correctly recall when he had been a student at all but one of his seven schools [redacted] University) and what he had studied at two schools, stating under oath that he had studied: (1) ESL at [redacted] school (where he had been approved for a two-year course of study for an associate degree in fashion merchandising); and (2) massage and ESL at [redacted] School of Business (where he had been approved for a two-year course of study for an associate degree in accounting). Based on [redacted] school's participation in the F-1 student fraud scheme, the Applicant's failure to provide requested evidence that he attended classes and completed coursework at [redacted] school, and his inconsistent answers regarding the nature and dates of his studies at [redacted] school and other institutions through which he had sought to procure evidence of his continuing F-1 status, the Director found that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act.

On appeal, the Applicant claims that he did not commit fraud or willful misrepresentation of a material fact with respect to [redacted] school because he was one of the small number of students who had attended real classes. However, he also contends that he cannot provide evidence of his attendance at [redacted] College *because* the school was shut down due to the immigration-related fraud and cannot provide him with evidence of his studies. The Applicant does not explain why he is unable to provide his own evidence of having attended [redacted] school during the relevant 2014 to 2015 period. With respect to the Director's finding that the Applicant's 2021 statement contained inconsistencies regarding his studies at prior schools, the Applicant submits a new statement from his spouse, who asserts that she was present during the 2021 interview, needed to interpret for the Applicant due to his weak English language skills, and suggests that any inconsistencies in his statements and evidence are due to his confusion during the interview.

We acknowledge the Applicant's assertion that he was one of the very few actual students but cannot now obtain evidence from [redacted] school because it was closed for fraud. We also acknowledge his wife's claim that any inconsistencies his 2021 testimony and evidence are likely due to his weak English-language skills and resulting confusion rather than evidence of his student visa fraud. However, the burden of proof is on the Applicant is to show that he is admissible and where there is doubt, the burden is on the Applicant to show that he was a bona fide student who maintained his F-1 status by actually attending a given school. In this case, the record is sufficient to show that a reasonable person would find that the Applicant willfully misrepresented a material fact regarding his intent to attend, or actual attendance at, [redacted] school in an attempt to gain other documentation, whether an approved Form I-20 or updated records in SEVIS. The record includes documentation of [redacted] school's fraudulent activity, the Applicant's inconsistent statements and evidence regarding his history at [redacted] school and other schools he claims to have attended, and his inability to provide requested evidence that he attended and completed courses at [redacted] school. Consequently, the Applicant has not overcome the Director's determination that he is inadmissible under section 212(a)(6)(C)(i) of the Act.

B. Extreme Hardship to Qualifying Relative

After concluding that the Applicant is inadmissible, the Director determined that the Applicant had not demonstrated that his U.S. citizen spouse, his sole qualifying relative, would experience extreme hardship upon her relocation to Japan, as she claims.

On appeal, the Applicant asserts that if he is denied admission, his U.S. citizen spouse would experience extreme hardship upon relocation to Japan. In support of this assertion, he references documentation previously reviewed and considered by the Director in rendering the decision to deny the application, but asserts that the Director did not address the cumulative effects of each hardship claimed. We find no such error with the Director's decision, which after considering the specific claims, also considered the effects in the aggregate by concluding that although the Applicant and his spouse may experience difficulties in adjusting to life in Japan, the evidence submitted did not show that his spouse would experience extreme hardship beyond what every other U.S. citizen would upon relocation. The Applicant does not submit documentation on appeal to address the deficiencies raised by the Director with respect to extreme hardship. The Applicant has thus not established on appeal that his qualifying relative would be subjected to extreme hardship upon relocation.

III. CONCLUSION

The Applicant has been found inadmissible for fraud or willful misrepresentation of a material fact, and he has not demonstrated extraordinary circumstances that warrant a favorable exercise of discretion. The Applicant is consequently ineligible for a waiver of his inadmissibility under section 212(h) of the Act.

ORDER: The appeal is dismissed.