U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23232718

Date: OCT. 31, 2023

Appeal of Louisville, Kentucky Field Office Decision

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

The Applicant, a native and citizen of Mauritania 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 by filing Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application). *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 cause extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Louisville, Kentucky Field Office denied the application, concluding that the record did not establish that the Applicant's U.S. citizen spouse would experience extreme hardship if the Applicant were refused admission to the United States. 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

A noncitizen who, by fraud or willful misrepresentation, seeks or has sought to procure a visa, documentation, or admission into the United States, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

A noncitizen may request a waiver of this ground of inadmissibility available under section 212(i) of the Act, which requires them to show that refusal of admission would result in extreme hardship to a U.S. citizen or LPR spouse or parent.

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).

If the noncitizen demonstrates the requisite extreme hardship, they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

II. ANALYSIS

A. The Applicant Is Inadmissible for Having Committed Fraud or Material Misrepresentation

The Director found the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act for having committed fraud or material misrepresentation to obtain admission to the United States. The Applicant contests this ground of inadmissibility. He notes that his visitor visa listed him as married due to an unintentional error that occurred because he was unfamiliar with the paperwork. The Applicant also contends that it is not necessary to be married to be granted a visitor visa and that therefore any misrepresentation on the visa application was immaterial. The Applicant cites *Maslenjak v. US*, 137 S. Ct. 1918 (2017) for the proposition that USCIS must show that the misrepresented fact was either directly disqualifying or sufficient to prompt a reasonable official to undertake further investigation that would disclose a legal disqualification. The Applicant also cites to *Matter of D-R-*, 27 I&N 105 (BIA 2017), arguing that it allows an applicant to overcome a charge of material misrepresentation where no proper determination of inadmissibility could have been made.

We agree with the Director that the Applicant is inadmissible for having committed fraud or a material misrepresentation. In *Matter of D-R-*, the BIA clarified that misrepresentation is material where "the misrepresentation tends to shut off a line of inquiry that is relevant to the alien's admissibility" and would predictably allow the discovery of facts relevant to admission to the United States.[1] While the Applicant is correct that being married is not a prerequisite to receiving a visitor

[1] In *Matter of D-R-*, the BIA discussed the scope of the Supreme Court's decision in *Maslenjak* and other cases, noting that *Maslenjak*'s analysis of a "material" misrepresentation was not linked to 212(a)(6)(C)(i) of the Act. Rather, *Maslenjak* analyzed criminal responsibility for making false statements during naturalization proceedings and tied its discussion of materiality to the citizenship statutes. In *Matter of D-R-*, the BIA therefore determined that "material" was ambiguous as described in 212(a)(6)(C)(i) of the Act and the agency had authority to explain its construction of that term. *See generally Matter of D-R-*, 25 I&N at 109-111. We limit our analysis of materiality in this case to the standard set forth in *Matter of D-R-* and do not address the Applicant's proposed application of *Maslenjak* to overcome the misrepresentation.

visa, it is nonetheless relevant to the consular officer's evaluation of a visa applicant's ties to their home country.

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. 9 FAM § 402.2-2(B)(a). Consular officers are further instructed in analyzing residence abroad that applicants "must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin." 9 FAM § 401.1-3(E)(2). The misrepresentation made by the Applicant regarding his marital status tended to shut off a line of inquiry regarding his close family ties and his intentions regarding his residence in Mauritania.

As the Applicant's misrepresentation to the consular officer was material, the Applicant bears the burden of showing that "no proper determination of inadmissibility could have been made." *Matter of D-R-*, 27 I&N at 113. In this case, as marital status and the depths of an applicant's ties to their foreign residence forms part of consular officer's analysis of entitlement to a temporary visitor visa, and failing to show nonimmigrant intent results in the refusal of a visa, the Applicant has not shown that he was necessarily admissible. Therefore, he must demonstrate eligibility for a waiver of this ground of inadmissibility by showing, among other things, extreme hardship to his U.S. citizen spouse. Section 212(i) of the Act.

B. The Applicant Has Not Established Extreme Hardship to His U.S. Citizen Spouse in the Event of Separation

An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant, and 2) if the qualifying relative relocates overseas with the applicant. Establishing 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. 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 generally* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual (explaining, as policy guidance, determinations of extreme hardship upon separation and relocation). In this case, the Applicant's spouse has not clearly indicated before the Director or on appeal whether she would relocate to Mauritania or remain in the United States if the waiver is denied. The Applicant must therefore establish that if he is denied admission his spouse would experience extreme hardship upon separation and also upon relocation.

On appeal, the Applicant has not submitted additional documentary evidence. In the appeal brief, the Applicant asserts that that his spouse established extreme hardship based on the documentation provided to the Director. He contends that the Director failed to fairly weigh all factors and argues that the evidence provided was sufficient to demonstrate extreme hardship when properly considered in the aggregate. The Applicant argues that insufficient weight was given to the country conditions

in Mauritania, particularly the high levels of crime and terrorism, and the impact this security situation would have on the Applicant's spouse. The Applicant also maintains that the Director gave inadequate consideration to the health situation of the Applicant's mother-in-law. The Applicant notes that, while his mother-in-law is not the qualifying relative, the need to provide her with care would impact the Applicant's spouse in the event of either relocation of separation.

In support of the prospective economic harm, the Applicant provided the Director with the expenses currently accrued in the household as well as his spouse's current income. He indicated that there was a significant shortfall between her earnings and these expenses, and he argued that his departure would leave her unable to meet these expenses and render her homeless. He also noted that he and his spouse began a business together and were in the process of beginning another business, for which they intended to purchase a vehicle. The Applicant's spouse was employed part time. She noted that she could not work full time or otherwise increase her income due to family care obligations.

With respect to family impacts, the Applicant's spouse indicated that the Applicant "can help take care of my mother's needs" as he worked from home. She indicated that without the Applicant at home, she would be forced to quit her job to provide her mother with care. She would also be unable to provide her grandchild with childcare, as she would be unable to watch her grandchild and care for her mother simultaneously. She noted that her daughter was unable to afford daycare and would have to quit her job without this assistance.

The Applicant also noted that the uncertainty surrounding his immigration status had negatively impacted his wife's emotional state. He indicated she was desperate, fearful, and sad. He noted that they were planning to have children together and wanted to build a life together. The Applicant's spouse described him as her support system.

The financial hardship that would be incurred by the Applicant's spouse does not rise beyond the level of a common consequence of separation. While the Applicant argues that his wife would be unable to continue in her current living arrangement and would become homeless, the record does not establish that this outcome is the necessary result of his departure or that other living arrangements are not possible. Loss of income and decreased ability to manage payments are inherent in most separations. We appreciate that separation would cause economic detriment to the Applicant's spouse in the form of lower household earnings that may make her unable to meet her current expenses. However, the Applicant has not shown that these economic impacts rise beyond the common consequences of separation.

According to their affidavits, the Applicant and his spouse have founded a business together in the United States and have registered an LLC to run it. However, we are unable to analyze whether and to what extent this business would be impacted in the event of the Applicant's departure. We have not been provided with details of how the business is run, which parts of the business are managed or overseen by the Applicant, or whether this work could continue from abroad. The Applicant has also not outlined what economic outlays have been made in order to run this business or what financial impacts would result from the sale of this business.

The Applicant indicates that he aids in caring for his mother-in-law, and that his spouse would be negatively impacted if he could no longer provide this support. However, neither he nor his spouse describe in detail the care the Applicant currently provides. The Applicant indicated that he called the emergency services on one occasion when his mother-in-law fell. However, he has not provided information regarding other assistance he provides to his mother-in-law that would become his spouse's responsibility if he were to return to Mauritania. The Applicant's spouse indicates that she would not be able to watch her grandchild while caring for her mother and would be unable to work outside the home due to the need to care for her mother. However, she has not provided information regarding the time spent caring for her mother that would preclude additional outside employment. In addition, while the Applicant's mother-in-law may require assistance bathing, dressing, and taking medication, the information provided does not indicate that she requires supervision or assistance throughout the day. We have not received medical records confirming these limitations or documenting the need for this level of care.[2]

Finally, we have considered the impact separation would have on the Applicant's spouse with respect to the couple's ability to have children, as well as the impact on his spouse's emotional state. While undoubtedly challenging, difficulty in conceiving is a common consequence of separation for any family seeking to bear children. Regarding emotional hardship, the Applicant has not provided evidence that his wife is more vulnerable to emotional harm than what would normally be experienced upon separation.

Even when considering all factors in the aggregate, the Applicant has not demonstrated that his spouse would experience some hardship if she were separated from him. We need not reach, and therefore reserve, any analysis regarding extreme hardship in the event the Applicant's spouse were to relocate to Mauritania. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Applicant's misrepresentation on his nonimmigrant visa application was material. He is inadmissible under section 212(a)(6)(C)(i) of the Act for having committed fraud or material misrepresentation to obtain admission to the United States. Because he has not shown by a preponderance of the evidence that his U.S. citizen spouse would suffer extreme hardship if she were separated from him, the Applicant has not established that he qualifies for a waiver of this ground of inadmissibility.

ORDER: The appeal is dismissed.

---

[2] We have reviewed the arguments relating to the care of a grandchild. While the Applicant's spouse indicates that her daughter is unable to afford childcare and would be forced to quit her job if the Applicant were to depart, we have been provided with no documentation or specific information to support these assertions. Furthermore, while a change in her daughter's situation may have some emotional impact on the Applicant's spouse, the daughter is not herself a qualifying relative whose hardship can be considered for purposes of a waiver.