U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29141113

Date: DEC. 04, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant, a native and citizen of Ethiopia, has applied for an immigrant visa, which requires him to show, inter alia, that he is admissible to the United States or eligible for a waiver of inadmissibility. Section 245(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(a)(2). A U.S. Department of State ("DOS") consular officer found the Applicant inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), and for human smuggling under section 212(a)(6)(E)(i) of the Act, and he seeks discretionary waivers of inadmissibility under sections 212(i) and 212(d)(11) of the Act, respectively, for the fraud and human smuggling inadmissibility grounds.

The Director of the Nebraska Service Center denied the Applicant's Form I-601, Application to Waive Inadmissibility Ground (waiver application), concluding that the Applicant is inadmissible for human smuggling under section 212(a)(6)(E)(i) of the Act and he did not establish eligibility for a waiver of this inadmissibility ground under section 212(d)(11) of the Act. The Director did not reach the merits of section 212(i) waiver request for fraud or willful misrepresentation as no purpose would be served in adjudicating it, as he would remain inadmissible for human smuggling even if such waiver were granted. The matter is now before us on appeal, which we review 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.

Any noncitizen who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other noncitizen to enter or to try to enter the United States in violation of law is inadmissible under section 212(a)(6)(E)(i) of the Act. There is a limited discretionary waiver for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, for noncitizens seeking admission or adjustment of status as beneficiaries of certain family-based petitions, if they have encouraged, induced, assisted, abetted, or aided only an individual, who at the time of such action was their spouse, parent, son, or daughter (and no other individual), to enter the United States in violation of law. Sections 212(a)(6)(E)(iii) and 212(d)(11) of the Act. The Applicant bears the burden of proof to establish eligibility for the benefit sought 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 (AAO 2010).

The record shows that in his 2006 U.S. immigrant visa application, the Applicant indicated that he married his wife in 1983 and they have five children together, born in 1984, 1986, 1989, 1992, and 1998, respectively; and he included his spouse and four of their claimed children as derivative

beneficiaries of his immigrant visa application. At the time he applied for the U.S. immigrant visa, he also claimed to be the four children's biological father and submitted their respective birth certificates showing him as their father, in order to bring them into this country as derivative beneficiaries of his visa application. However, contrary to the Applicant's claim during his immigrant visa process that he was the children's biological father, DNA test results requested by a DOS consular officer proved that none of the claimed children were actually his biological children. The consular officer subsequently determined that he was inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act and for human smuggling under section 212(a)(6)(E)(i) of the Act.

On appeal, the Applicant concedes that he included the four children as beneficiaries of his immigrant visa application as his biological children. But he asserts for the first time on appeal that he believed they were his biological children, and that he was surprised by the DNA test results and was a victim of his wife's infidelities. The Applicant avers on appeal that because he did not know he was not the biological father until he learned of the DNA test results, section 212(a)(6)(E)(i) inadmissibility for attempting to smuggle the children into this country through the immigrant visa process does not apply to his case. Alternatively, he argues that even if this ground of inadmissibility applies to him, he is eligible for a waiver under section 212(d)(11) of the Act because, regardless of the DNA test results, he raised the children as their only father and therefore the individuals he attempted bring into this country were his children for immigration purposes. *Id.* In support of his appeal arguments, he submits a brief and new letters from four of the five claimed children.

We acknowledge the Applicant's appeal assertion that he did not knowingly commit fraud or make a willful misrepresentation because he is a victim of his wife's infidelities and he thought that he was the four children's biological father until it was proven otherwise during the immigrant visa process. We also acknowledge the children's letters attesting to their relationships with the Applicant and his good moral character. However, because the Applicant is residing abroad and seeking an immigrant visa, DOS makes a final determination concerning admissibility and eligibility for a visa. Here, as stated, the record contains evidence indicating that the children included as derivative beneficiaries of the Applicant's immigrant visa application are not his biological children as he claimed. Based on this evidence, the DOS consular office found him inadmissible for human smuggling under section 212(a)(6)(E)(i) of the Act for knowingly attempting to bring the four children to the United States by including them in his immigrant visa application by falsely claiming to be their biological father.

Even considering the Applicant's new assertions on appeal as to the circumstances related to the DNA test results, they do not overcome the evidence indicating that he is inadmissible for attempting to bring the children into this country as beneficiaries of his immigrant visa application. None of the documents submitted below, including the numerous personal affidavits, specifically mention or otherwise address the evidence indicating that the Applicant is not the four children's biological father. Further, the Applicant did not provide this or any explanation to the Director regarding the facts on which the DOS found him inadmissible. Regardless, as explained, DOS makes the final determination of inadmissibility. Thus, we may consider only whether he qualifies for a waiver of his inadmissibility.

As stated, a section 212(d)(11) waiver of inadmissibility for human smuggling is available only to certain noncitizens who encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the noncitizen's spouse, parent, son, or daughter (and no other individual). The Applicant has not met the requirements of this limited waiver. He asserts that he is eligible for

this waiver because even if the four children he added on his immigrant visa application are not his biological children, they qualify as his own children for purposes of this waiver because they are his spouse's children and he raised them as their stepfather since birth and always maintained a parent-child relationship with them. However, although the definition of "child" under section 101(b)(1)(B) of the Act, 8 U.S.C. § 1101(b)(1)(B), includes a stepchild, the record on appeal does not establish that the four children are in fact the Applicant's stepchildren. The evidentiary value of the children's birth certificates he submitted as evidence of his claimed biological relationship with them were undermined by the DNA test results to the contrary and therefore have diminished evidentiary weight; consequently, the birth certificates also do not establish stepparent-stepchild relationship, as they are insufficient to show that the children are the biological children of the Applicant's spouse. Although the Applicant also claimed before the Director that he "tried to … present documentation" to the DOS consular officer "as proof of his paternal relationship," he did not specify what documents he submitted and the record before us does not contain any such documentation. Further, other than photographs, hardship evidence relating to the spouse, and general assertions contained in the personal statements from the Applicant, the spouse, and the children, indicating that he always maintained loving and caring relationships with them, the record contains no independently corroborating evidence of the claimed stepparent-stepchild relationships with the children. Additionally, although the children in their letters on appeal also claim life-long support from the Applicant, and specifically mention "official" and "verifiable" documents "spanning over 30 years" purportedly showing their ongoing parent-child relationships, such as medical and school documents as well as "dedication certificates" issued by "the national and local governments of Ethiopia, schools, hospitals, and churches over a range of years," the record does not contain any of these documents. Thus, the record does not establish the claimed parent-child relationship between the Applicant and the four children as required to establish eligibility for the section 212(d)(11) waiver. The Applicant did not provide any other evidence or persuasive explanation below or on appeal to overcome the DOS' determination that he is subject to section 212(a)(6)(E)(i) inadmissibility and that he is ineligible for a section 212(d)(11) waiver of this inadmissibility ground.

Applicants for admission bear the burden of establishing eligibility for a waiver of inadmissibility. *Matter of Chawathe*, 25 I&N Dec. at 375; *Romero v. Garland*, 7 F.4th 838, 840-41 (9th Cir. 2021) (holding that applicant seeking admission must establish "clearly and beyond doubt" that they are entitled to be admitted and is not inadmissible). The Applicant has not met his burden of proof as the record indicates he is inadmissible under section 212(a)(6)(E)(i) of the Act, and he has not established his eligibility for a waiver of such inadmissibility under section 212(d)(11) of the Act. Accordingly, no purpose would be served in addressing his request for a waiver under section 212(i) of the Act, as he would remain inadmissible for human smuggling under section 212(a)(6)(E)(i) of the Act.

ORDER: The appeal is dismissed.