U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-A-A-

DATE: DEC. 4, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY

The Applicant, a native and citizen of Pakistan, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On March 9, 2015, the Director denied the application finding that the Applicant was inadmissible for seeking admission to the United States by fraud or willful misrepresentation, and that she had not established statutory eligibility to apply for a waiver of inadmissibility.

On appeal, the Applicant submits a brief and two Form I-860s, Notice and Order of Expedited Removal. The entire record was reviewed and considered in rendering a decision on the appeal. We review these proceedings *de novo*.

Section 212(a)(6)(C)(i) of the Act states:

> Any alien 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 this Act is inadmissible.

Section 212(i) of the Act further provides:

> (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The Director found that the Applicant misrepresented her intentions in May 2001 in an attempt to gain entry into the United States. The principal elements of a misrepresentation that renders a foreign national inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality.

In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

> A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

Id. at 447. The Supreme Court has addressed the issue of material misrepresentations in *Kungys v. United States,* 485 U.S. 759 (1988). The Supreme Court stated that misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

The Applicant asserts that she is not inadmissible for fraud or misrepresentation. The Applicant maintains that on May 10, 2001, at the port of entry, she and her spouse presented themselves for admission into the United States as temporary visitors, but the immigration inspector found that they were removable, under section 212(a)(7)(A)(i)(l) of the Act, as intending immigrants not in possession of a valid unexpired immigrant visa. The Applicant states that the immigration inspector further determined that her spouse was removable for having misrepresented his intentions in coming to the United States, but that such a finding of misrepresentation against the Applicant was not made.

The record establishes that on May 10, 2001, the Applicant applied for entry to the United States by presenting a B-2 nonimmigrant visa for pleasure. The record indicates that the Applicant and her spouse claimed that they were returning to the United States, from an earlier six month stay, to attend their son's graduation and visit in the United States for six months. However, a search revealed several pieces of evidence that established that the Applicant and her spouse were not visitors for pleasure, but rather continuing/intending immigrants of the United Sates. The search revealed that the Applicant's spouse was in possession of a valid State of Texas driver's license, several credit cards from the United States, bank accounts in the United States, and was the owner of a company registered in the State of Texas. The record further establishes that the immigration inspector determined that the Applicant was attending college classes in the United States and also had automobile insurance in the United States.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, the evidence in the record establishes that the Applicant misrepresented her intentions when she attempted to enter the United States on a nonimmigrant visa in May 2001. Although she presented herself as a nonimmigrant visitor for pleasure, the record establishes that she intended to reside in the United States. As such, based on the evidence in the record, the Applicant is inadmissible under section 212(a)(6)(C) of the Act, for fraud or willful misrepresentation.

Section 212(i) of the Act states that a waiver is available to an applicant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence. In the instant case, the Applicant has not established that a qualifying relative for purposes of a Form I-601 waiver under section 212(i) of the Act exists. As the Applicant has not established that she has a qualifying relative, she is statutorily ineligible for a waiver of inadmissibility under section 212(i) of the Act.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of K-A-A-*, ID# 14998 (AAO Dec. 4, 2015)