U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-R-G-

DATE: DEC. 18, 2015

APPEAL OF DENVER FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Denver, Colorado, denied the application. The matter is now before us on appeal. The record establishes that the Applicant is not inadmissible, therefore the Form I-601 is moot. The appeal will be dismissed, and the matter will be remanded for further proceedings consistent with this opinion.

The Applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under this Act through fraud or willful misrepresentation of a material fact. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his U.S. citizen father. The Applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen father and lawful permanent resident mother.

In a November 10, 2014, decision, the Director determined that the Applicant did not establish that extreme hardship would be imposed on a qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly.

On appeal, the Applicant contends that U.S. Citizenship and Immigration Services (USCIS) did not fully and completely analyze the hardship situation of the Applicant's family, and that proper analysis would result in the granting of his waiver application.

The record includes, but is not limited to, the following documentation: statements by the Applicant, the Applicant's parents and spouse, and other family members; medical documentation for the Applicant's parents; financial documentation; civil documentation; and country-conditions information on Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) states:

> (i) 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)(1) of the Act provides:

> 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 [...].

Immigration records indicate that U.S. border officials apprehended the Applicant on 1998, after he entered the United States without inspection, and voluntarily returned him to Mexico. He states that he claimed a false name, the name of his grandfather, at the time of his apprehension.

During the Applicant's encounter with U.S. immigration officials, he did not seek admission into the United States, as he was already present in the country. The Applicant also did not attempt to obtain a visa or any documentation from immigration officials. We note that had the Applicant sought to procure voluntary departure, he would be seeking a benefit under the Act; however, voluntary return is not a benefit found in the Act. Section 240B of the Act. We therefore find that in the present case, by giving immigration officials a false name after he had entered the United States without inspection, the Applicant did not seek to procure a visa, other documentation, admission into the United States, or another benefit provided under the Act. He is therefore not inadmissible under section 212(a)(6)(C)(i) of the Act.

As such, the waiver application under section 212(i) of the Act is unnecessary. Evaluation of whether the Applicant established extreme hardship to a qualifying relative is therefore moot and will not be addressed.

We conduct appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As the record establishes that the Applicant is not inadmissible, the Form I-601 is moot, and the appeal is dismissed.

ORDER: The appeal is dismissed. The matter is remanded to the Field Office Director, Denver, Colorado for further proceedings consistent with the foregoing opinion.

Cite as *Matter of A-R-G-*, ID# 12803 (AAO Dec. 18, 2015)