U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-G-G-

DATE: APR. 5, 2016

MOTION ON ADMINISTRATIVE APPEALS 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 for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). A foreign national seeking to be admitted to the United States as an immigrant or to adjust to lawful permanent resident (LPR) status must be admissible or receive a waiver of inadmissibility. 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 Acting USCIS Field Office Director, Atlanta, Georgia, denied the Form I-601. The Director concluded that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, specifically for using another name to seek employment. The Director then determined that the Applicant did not have a qualifying relative and was therefore ineligible for a Form I-601 waiver. We determined that the record did not contain sufficient evidence to support the Director's finding that the Applicant was inadmissible under section 212(a)(6)(C)(i) for using another name to seek employment. However, we dismissed the appeal on the basis that the Applicant was subject to a separate finding of inadmissibility under 212(a)(6)(C)(i) of the Act for misrepresenting his identity in his asylum application and that the record did not contain evidence to show extreme hardship.[1]

The matter is now before us on a motion to reopen and a motion reconsider. We will deny the motions.

[1] In our August 3, 2015 decision we noted that the record also reflected that in 2010 the Applicant was convicted of five counts of attempted forgery in Georgia. We did not address whether the Applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for committing crimes involving moral turpitude because of the Applicant's inadmissibility under section 212(a)(6)(C)(i), which required him to meet the higher hardship standard of section 212(i). We also noted that the Applicant may be inadmissible under section 212(a)(6)(E) of the Act for alien smuggling but did not make a finding as to this because the appeal was to be dismissed on another ground.

In the motion, the Applicant claims that the Director erred in finding him inadmissible for fraud or misrepresentation and in support cites case law related to the *res judicata* doctrine and the elements of a material misrepresentation.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a fraud or misrepresentation, specifically for misrepresenting his identity in his asylum application.

A motion to reopen must state new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

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, 8 U.S.C. § 1182(i), provides, in pertinent part:

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 its decision in *Kungys v. United States,* 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the Applicant's 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.

Decades of case law have contributed to the meaning of extreme hardship. The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury." *Matter of Ngai,* 19 I&N Dec. 245, 246-47 (BIA 1984). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; *see also Matter of Shaughnessy,* 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was "no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects"). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment," are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); *but see Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which the qualifying relatives would relocate). Nevertheless, all "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

II. ANALYSIS

The Applicant maintains that his false testimony on the asylum application was immaterial because he was not granted asylum or any other immigration status. The Applicant also asserts that the *res judicata* doctrine bars us from deciding his case on an inadmissibility ground that predates his Form I-485, Application to Register Permanent Residence or Adjust Status.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, specifically for filing an asylum application using another name. The record contains a Form I-589, Request for Asylum in the United States, which the Applicant filed in 1994 using another identity and nationality. These misrepresentations were directly material to the Applicant's request for asylum based on persecution, an immigration benefit. *See Matter of S- and B-C-, supra.* As for the Applicant's claim that his misrepresentations were immaterial because he

was not granted asylum or any other immigration status, we note that the Applicant filed a fraudulent asylum application to obtain immigration benefits, including the ability to work and remain in the United States and ultimately, obtain asylum.[2] As to his assertion that we cannot find him subject to section 212(a)(6)(C)(i) on the basis that *res judicata* bars deciding his case on an inadmissibility ground predating his Form I-485, we exercise *de novo* review of all issues involving the application of immigration law, policy, and discretion to the facts of a case. This means we look at the record anew and are not required to defer to findings made in the initial decision. Furthermore, we may address new issues that were not raised or resolved in a prior decision. Here, we find that the evidence in the record establishes that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation.

B. Waiver

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case the Applicant's father.

We noted in our August 3, 2015 decision that the record did not contain any claims or evidence of hardship to the Applicant's father. On motion, the Applicant has not made any claims or provided evidence of hardship to his father. As such, the record does not establish that refusal of admission would result in extreme hardship to the Applicant's father either if he remained in the United States or relocated to Mexico.

C. Discretion

As the Applicant has not demonstrated extreme hardship to a qualifying relative or qualifying relatives, we need not consider whether the Applicant warrants a waiver in the exercise of discretion.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we deny the motions.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of R-G-G-*, ID# 15903 (AAO Apr. 5, 2016)

[2] The record reflects that the Applicant had employment authorization based upon his asylum application.