U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-J-G-

DATE: JULY 14, 2016

APPEAL OF HIALEAH, FLORIDA FIELD OFFICE DECISION

APPLICATION: FORM 1-601. APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY

The Applicant, a native and citizen of Colombia, 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 status to lawful permanent residence 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 Field Office Director, Hialeah, Florida, 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. The Director then determined that the Applicant was ineligible for a waiver as his son was not a qualifying relative under Section 212(i) of the Act.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in finding him inadmissible for fraud or misrepresentation. He also claims that if he is found to be inadmissible, his waiver application should be considered under the pre-IIRIRA[1] section 212(i) of the Act, because the conduct rendering him inadmissible occurred prior to the enactment of IIRIRA and the pre-IIRIRA version of section 212(i) allowed for a discretionary waiver if a misrepresentation took place at least 10 years before the application for adjustment of status.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for fraud or misrepresentation, specifically for attempting to procure an employment authorization document (EAD) with a fraudulent Form I-94, Arrival/Departure Record.

[1] Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Section 212(a)(6)(C)(i) of the Act renders inadmissible any foreign national 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 the Act.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides for a waiver of this inadmissibility [if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national.

II. ANALYSIS

The only issues presented on appeal are whether the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and, if he is inadmissible, whether his waiver application should be considered under the pre-IIRIRA section 212(i) of the Act because the conduct rendering him inadmissible occurred prior to the enactment of IIRIRA.

The record establishes that the Applicant's misrepresentation was not material within the meaning of section 212(a)(6)(C)(i) of the Act. The Applicant is therefore not inadmissible under section 212(a)(6)(C)(i) and the waiver application is unnecessary. Because the waiver application is unnecessary, the issues of whether the waiver application should be considered under the pre-IIRIRA section 212(i) and whether the Applicant established extreme hardship to a qualifying relative pursuant to section 212(i) are moot and will not be addressed.

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. The record establishes that the Applicant entered the United States as a B-2 visitor on November 4, 1989 at Florida. He was authorized to remain in the United States until May 3, 1990. The Applicant asserts that after his period of authorized stay expired, he was referred to a man who told the Applicant that he qualified for permanent residence and that he could his extend his status by filing an application on the Applicant's behalf. The Applicant states that he met the man in an office and paid him $700. The man gave the Applicant a card that was purported to be the renewal of the Applicant's Form I-94 that indicated an arrival date of August 20, 1989, and authorization to remain until February 19, 1990. The man also told the Applicant that he could go to the former Immigration and Naturalization Service (INS) office and obtain an EAD card based on his new Form I-94 and pending residency application. In January 1991, the Applicant went to the INS office to obtain an EAD card and was subsequently apprehended. He was removed from the United States in February 1991. In May 1991, he reentered the United States without inspection at an unknown port of entry.

The Applicant asserts that he did not commit a willful representation because he did not know that his new Form I-94 was fraudulent, and if he had, he would have never gone to the INS office and presented the document.

Inadmissibility based on willful misrepresentation requires a finding that a person willfully misrepresented a material fact. "[T]he test of whether concealments or misrepresentations are 'material' is whether they can be shown by clear, unequivocal, and convincing evidence to have been predictably capable of affecting, *i.e.*, to have had a natural tendency to affect, the Immigration and Naturalization Service's decisions." *Kungys v. United States*, 485 U.S. 759, 760 (1988). The Board of Immigration Appeals has held that a misrepresentation is material if either the foreign national is excludable on the true facts, or the misrepresentation tends to shut off a line of inquiry which is relevant to the foreign national's eligibility and which might well have resulted in proper determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

Here, the Applicant procured a fraudulent Form I-94 that did not provide him with any legal immigration status. The Applicant's official I-94 allowed him to remain in the United States until May 30, 1990, while the fraudulent Form I-94 indicated a nonimmigrant status valid until February 19, 1990. When the Applicant went to the INS office in 1991, he would have been out of status based on both the official Form I-94 and the fraudulent Form I-94. The fraudulent Form I-94 did not affect his eligibility for the benefits he sought, provide him with any immigration benefit, or enable him to gain admission to United States. Because the Applicant was out of valid nonimmigrant status based on his misrepresentation and based on the true facts, the concealment did not cut off a relevant line of inquiry that might have led to a different finding. As the record reflects that Applicant's misrepresentation was not material, we will not address whether his misrepresentation was willful.

The record does not support finding that the Applicant's misrepresentation was material. Therefore we find that the Applicant is not inadmissible for misrepresentation under section 212(a)(6)(C)(i) of the Act. The waiver application is thus unnecessary and the issue of whether he established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed.

III. ADDITIONAL INADMISSIBILITY

While not addressed by the Director, because of his previous deportation order, the Applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

IV. 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. Here the Applicant is not inadmissible and therefore not required to file a waiver application. Because the waiver application is unnecessary, the appeal is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of A-J-G-*, ID# 16631 (AAO July 14, 2016)