U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10478522

Date: FEB. 2, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident (LPR) and seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h), for his conviction of a crime involving moral turpitude (CIMT).

The Director of the Santa Ana Field Office in California denied the application on the ground that the Applicant did not establish that his U.S. citizen spouse would experience extreme hardship if his waiver application is denied and she remains in the United States without him or relocates to Mexico with him. The Applicant filed an appeal, which we dismissed on the grounds that the Applicant did not establish his eligibility for a waiver on the ground of rehabilitation or on the ground of extreme hardship to a qualifying relative. The Applicant then filed a motion to reopen and a motion to reconsider, which we also dismissed. While finding that the Applicant submitted sufficient evidence to demonstrate his rehabilitation, we determined that he did not establish that a qualifying relative would experience exceptional and extremely unusual hardship if his waiver application is denied, as required by the regulation at 8 C.F.R. § 212.7(d).

The matter is now before us on another motion to reopen and motion to reconsider. A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our previous decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. For the reasons discussed hereinafter, we will dismiss the combined motion.

I. LAW

Section 212(a)(2)(A) of the Act provides that any noncitizen convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible.

Noncitizens found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. Section 212(h)(1)(A) of the Act provides for a waiver where the activities occurred more than 15 years before

the date of the application if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the noncitizen has been rehabilitated. Section 212(h)(1)(B) of the Act provides for a waiver if denial of admission would result in extreme hardship to the noncitizen's United States citizen or lawful permanent resident spouse, parent, son, or daughter.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered "extreme," the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were the "common result of deportation" and did not alone constitute extreme hardship). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *See Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). In these proceedings it is the applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

An applicant may show extreme hardship in two scenarios: (1) if the qualifying relative remains in the United States separated from the applicant, and (2) if the qualifying relative relocates overseas with the applicant. Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. The applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda.

The burden is on the noncitizen to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Morales*, 21 I&N 296, 299 (BIA 1996). A favorable exercise of discretion is not warranted for noncitizens who have been convicted of a violent or dangerous crime, except in extraordinary circumstances, such as cases involving national security or foreign policy considerations, or when an applicant "clearly demonstrates that the denial . . . would result in exceptional and extremely unusual hardship" according to 8 C.F.R. § 212.7(d). Exceptional and extremely unusual hardship "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001). Even if the noncitizen were able to show the existence of extraordinary circumstances pursuant to 8 C.F.R. § 212.7(d), that alone may not be enough to warrant a favorable exercise of discretion. *See Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002) (providing that if the noncitizen's underlying criminal offense is grave, a showing of exceptional and extremely unusual hardship might still be insufficient to grant the immigration benefit as a matter of discretion).

II. HARDSHIP WAIVER ANALYSIS

The Director denied the waiver application on the ground that the Applicant did not establish that his U.S. citizen spouse would experience extreme hardship if the application is denied. The Director discussed a psychological evaluation of the Applicant's wife, which concluded that she would suffer

severe clinical anxiety and depression if her husband is returned to Mexico, but stated that this document and other materials submitted with the application did not support a finding that the Applicant's wife would experience extreme hardship if the Applicant is removed from the United States, regardless of whether she stayed in the United States without him or relocated with him to Mexico.

On appeal we reviewed the waiver application *de novo*, consistent with our authority as affirmed in *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), and issued a notice of intent to dismiss (NOID) based on our determination that the CIMT for which the Applicant was convicted was also a violent or dangerous crime, which generally does not warrant a favorable exercise of discretion. We noted that the Applicant was convicted of two crimes in California in the early 1990s, the first of which was in 1991 for second degree robbery in violation of California Penal Code section 211, resulting in a sentence of 270 days in jail and 36 months of probation, and that the Ninth Circuit found this crime to be a categorical crime of violence. *See Torres-Valdivias v. Lynch*, 786 F. 3d 1147, 1152 (9th Cir. 2015). As such, the heightened standard for a discretionary waiver under 8 C.F.R. § 212.7(d) applied, requiring the Applicant to show extraordinary circumstances or that exceptionally extreme and unusual hardship would result from a denial of his waiver application. We stated in the NOID that there were no extraordinary circumstances in the Applicant's case, and that the record contained no evidence that a denial of the waiver application would result in exceptional and extremely unusual hardship, or even if it was that a favorable exercise of discretion would be warranted. The Applicant responded to the NOID with additional documentation.

In our decision dismissing the appeal we discussed how the evidence in the record supported a conclusion that the Applicant's CIMT conviction was for a violent and dangerous crime. We also concluded that the evidence of record was insufficient to demonstrate that the Applicant was rehabilitated. We then discussed the evidence submitted by the Applicant in support of his claim that qualifying relatives would experience extreme hardship if his waiver application is denied and he is obliged to return to Mexico. We noted that the Applicant has five qualifying relatives – including his wife, three children, and his mother – and that none of them had stated whether they would stay in the United States without the Applicant or relocate with him to Mexico if his waiver application is denied. Accordingly, we indicated that the Applicant must establish that a qualifying relative would experience extreme hardship both upon separation and relocation.

The Applicant asserted that his wife had medical and emotional issues including anxiety, panic attacks, and depression that directly correlated with his pending separation from her. An affidavit from the Applicant's wife stated that the family will be split if her husband's waiver application is denied, and that she could not afford to keep up the household, which included her three children and a grandchild, without the Applicant's income. We discussed the previously submitted psychological evaluation which confirmed that the Applicant's wife reported physical symptoms such as indigestion, fatigue, and irritability due to the pending separation from her husband. We concluded, however, that the emotional and psychological hardships claimed by the Applicant's wife were not sufficiently detailed and documented, and that the evidence did not indicate to what extent her ability to carry out daily activities and responsibilities would be impacted by her husband's return to Mexico.

We discussed the Applicant's claim that his return to Mexico would have deleterious effects on the four qualifying relatives – his wife and three children – who lived in his household because they would

be deprived of his financial support. However, only limited documentation of the family's financial situation was submitted and it did not provide a complete picture of the household's expenses, assets, and liabilities. While we recognized that the household would be negatively impacted by the loss of the Applicant's income, we indicated that the record did not show that the financial hardships faced by the Applicant's wife would amount to more than the common results of removal or inadmissibility. We also discussed the evidence pertaining to the fifth qualifying relative – the Applicant's mother – which included a medical report indicating that she had various psychological and physical conditions and medications. However, there was no statement from a treating physician describing the severity of the mother's conditions, and no claim by the Applicant that he provides any specific assistance to his mother. We also noted that the mother's medical record showed that she has six children, and the record did not demonstrate that she would be unable to obtain any needed assistance from her other children.

In sum, we concluded that the Applicant had not established that any of his five qualifying relatives would experience extreme emotional or financial hardship, beyond the common results of inadmissibility or removal, if he returns to Mexico and they remain in the United States. Based on this finding we concluded that the Applicant did not meet the requirement in this case that extreme hardship must be established to a qualifying relative both upon separation and relocation (due to the lack of a statement of intent from any qualifying relative). Accordingly, we dismissed the appeal.

In support of its first combined motion to reopen and reconsider, the Applicant submitted a brief from counsel, additional tax documentation from the Applicant and his wife, and statements from the Applicant and multiple friends and relatives including three qualifying relatives – his mother, his wife, and one of his children – all of whom testified to the Applicant's positive character development over the years since his criminal convictions. In our decision we found that the Applicant submitted sufficient documentation to demonstrate that the Applicant had been rehabilitated in accordance with section 212(h)(1)(A) of the Act. However, we also concluded that the Applicant did not demonstrate that the denial of his waiver application would result in exceptional and extremely unusual hardship to himself or any qualifying relative, as required in 8 C.F.R. § 212.7(d). The statements of the Applicant and others submitted in support of the motion, which focused on the Applicant's rehabilitation, provided little or no information about any hardships they would suffer. The Applicant did not discuss any of the information included in the tax documentation, much less explain how that information showed that he or any qualifying relative would experience exceptional and extremely unusual hardship. We stated that the record still lacked details about the exact types of harm the Applicant and his family would experience if he is unable to remain in the United States. While acknowledging that the Applicant and his family would experience some hardship if the waiver application is denied, we concluded that the Applicant did not meet the "exceptionally extreme and unusual" hardship standard of 8 C.F.R. § 212.7(d). Accordingly, we dismissed the motions to reopen and reconsider.

The Petitioner's second combined motion to reopen and reconsider is now before us, accompanied by a brief from counsel and additional documentation. The Applicant claims that the aggregate hardships to qualifying relatives and himself if his waiver application is denied add up to the requisite level of "exceptional and extremely unusual" hardship to warrant a waiver of his criminal inadmissibility, and that the AAO should hold these proceedings in abeyance while the Applicant pursues a motion to

vacate his 1991 conviction under California Penal Code section 211 due to the alleged "legal defects in the underlying criminal proceedings." The additional materials submitted by the Applicant include family documents such as marriage, birth, and naturalization certificates; a letter from the employer of the Applicant's wife; the Applicant's pay statements for a six-week period from December 2019 to February 2020; a promotion certificate to the Applicant from a previous employer; mortgage loan documentation of the Applicant's wife from 2018 and 2019; and a court record from the Applicant's CIMT conviction in 1991.

The motion brief reiterates previous claims that the denial of the Applicant's waiver application will result in exceptional and extremely unusual hardship to all of his qualifying relatives. The brief asserts that the Applicant's household includes not only his wife, but all three of their children and a grandchild, and that he is financially responsible for all of them. Despite numerous opportunities to do so, however, the Applicant has still not provided a complete picture of the family's financial situation, including total household assets, expenses, and liabilities. The most recent federal tax return in the record is a transcript of the joint return filed by the Applicant and his wife for 2016. The record indicates that the Applicant's wife is employed, so she is a money-earner for the family. While the Applicant's three children do not appear to employed, they are all in their 20s and the motion brief acknowledges that they could get jobs and contribute financially to the household. The brief asserts that the family home would be lost without the Applicant's income, but the evidence of record does not substantiate that claim. The brief refers once again to the mental state of the Applicant's wife, describing her as suffering from severe anxiety, sleep disorder, and depression due to her husband's immigration situation, but no psychological evaluation, medical report, or other pertinent documentation has been submitted to verify these conditions. The brief also asserts that the Applicant's mother relies on the Applicant for her financial and emotional well-being, that she has a host of chronic medical conditions, and that the Applicant is her sole source of transportation to her doctor's appointments. No supporting documentation has been submitted to verify any of these claims. In short, none of the evidence submitted by the Applicant on motion demonstrates that the hardships his qualifying relatives claim they would experience if his waiver application is denied, even when aggregated, rise to the level of "exceptional and extremely unusual" hardship, as required in this case by 8 C.F.R. § 212.7(d).

Finally, the Applicant asserts that he would suffer extreme hardship if he returns to Mexico because he was brought to the United States as an infant, has lived for half a century in this country, has no recollection of life in Mexico, and would be endangered by the rampant crime in Mexico. While we acknowledge the Applicant's concerns about crime in Mexico, there is no evidence in the record that the Applicant would be a particular target for crime. We do not underestimate the challenges the Applicant will face in returning to Mexico, but they are within the scope of hardships to be expected in situations of family separation. Exceptional and extremely unusual hardship, the applicable standard in this case, "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." *Matter of Monreal-Aguinaga*, 23 I&N Dec. at 62. That standard has not been met by the Applicant in this case.

As for the Applicant's request that we hold these proceedings in abeyance pending the outcome of a motion in California to vacate the Applicant's CIMT conviction, we will not grant this request. The Applicant has submitted no evidence that any such motion has even been filed. Even if it has, the

Applicant is free to file a motion with the AAO to reopen and/or reconsider our latest decision should a California court rule favorably on a motion to vacate his CIMT conviction.

III. CONCLUSION

The evidence submitted on motion does not establish any new facts that would support a finding that the Applicant or any qualifying relative would experience exceptional and extremely unusual hardship if the Applicant's waiver application is denied. Accordingly, we will dismiss the motion to reopen. Nor does the Applicant's motion brief establish that our previous decision was based on an incorrect application of law or policy. Accordingly, we will also dismiss the motion to reconsider.

The Applicant bears the burden of proof to establish eligibility for the requested benefit 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 Applicant has not done so in this combined motion.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.