U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21035262

Date: MAR. 31, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant filed an Application for Waiver of Grounds of Inadmissibility, Form I-601, seeking a waiver of inadmissibility for a controlled substance violation under Section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h). *See also* Section 212(a)(2)(A)(i)(II) of the Act. The Applicant does not contest his inadmissibility, which is based on a 2018 marijuana possession conviction in Florida.

The Director of the Tampa, Florida Field Office denied the Form I-601 waiver application, concluding that the Applicant did not establish the denial would result in extreme hardship to his United States citizen spouse, his sole qualifying relative for the waiver purposes. *See* Section 212(h)(1)(B) of the Act. We subsequently dismissed his appeal and his combined motions to reconsider and reopen the proceeding, concluding that the Applicant failed to demonstrate the requisite hardship.

The matter is before us on a second motion filing. The Applicant has again filed combined motions to reconsider and reopen the proceeding. In support of the motions, he submits a December 2021 updated mental health evaluation of his spouse, articles about Brazil – the Applicant's country of citizenship, a statement entitled "Financial Hardship Summary for [the Applicant's Spouse] and [the Applicant]," and another statement entitled "Mental Hardship Summary." The Applicant contends that he has shown his spouse would experience extreme hardship if his waiver application were denied. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010); *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon review, we will dismiss the combined motions.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. Additionally, a review of any motion is limited to the bases supporting the prior adverse decision. 8 C.F.R. § 103.5(a)(1)(i). Thus, we examine any new facts and

arguments to the extent that they pertain to our dismissal of the Applicant's prior combined motions to reconsider and reopen the proceeding.

In addition, to be eligible for a waiver of inadmissibility under Section 212(h) of the Act, an applicant must demonstrate that denial of the waiver would result in extreme hardship to his or her United States citizen or lawfully resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act. If the record does not contain a statement from the applicant's qualifying relative specifically indicating whether he or she intends to remain in the United States or relocate with the applicant, then the applicant must establish by a preponderance of the evidence that denial of the Form I-601 waiver application would result in extreme hardship to the qualifying relative both upon separation and relocation. *See id.*; *Matter of Chawathe*, 25 I&N Dec. at 375; *see also* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual/volume-9-part-b-chapter-4 (providing, as guidance, the scenarios to consider in making extreme hardship determinations).

A determination of whether denial of waiver would result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). We recognize that some degree of hardship to the qualifying relative 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. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994). Moreover, in these proceedings, it is the applicant's burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

Furthermore, if the applicant demonstrates the existence of the requisite hardship, then he or she must also establish that U.S. Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver application. *See* Section 212(h) of the Act.

II. ANALYSIS

In our prior decision, we dismissed the Applicant's first motion filing for failing to satisfy motion requirements. Specifically, we dismissed his motion to reconsider our appellate decision because he did "not sufficiently articulate[] how our prior appeal decision misapplied law or USCIS policy." *See* 8 C.F.R. § 103.5(a)(3). In addition, we dismissed his motion to reopen the proceeding because "the additional evidence submitted in support of the motion to reopen does not establish that the Applicant's spouse would experience extreme hardship upon relocation to Brazil with her husband." *See* 8 C.F.R. § 103.5(a)(2).

A. Motion to Reconsider

On motion, the Applicant contends that we erred in concluding his spouse would not experience extreme hardship upon relocating with him to Brazil. In support of his first motion filing, the Applicant maintained that he and his spouse would not be able to find employment in Brazil, that his spouse would not be able to receive adequate medical and mental health care because she did not speak

Portuguese, that she would likely experience robbery, kidnapping and extortion, and that she would be unable to visit and communicate with her family members who lived in the United States.

As discussed in our prior motion decision, the evidence then before us, including his spouse's September 2020 letter and her September 2020 updated mental health evaluation, did not support the Applicant's contentions. We noted that the evidence confirmed both the Applicant and his spouse had worked and lived safely in Brazil. In addition, we observed the evidence did not show that upon returning to Brazil, the Applicant could not again find employment, that his spouse could not obtain medical and/or mental health services in English,[1] that she would experience violence or danger, or that she could not visit or communicate with her family members who lived in the United States. Based on the evidence then before us, we concluded that the motion evidence did not sufficiently establish that the Applicant's spouse would experience extreme hardship upon relocation to Brazil.

Now on motion, the Applicant, while disagrees with our findings, has not demonstrated that we erred in our previous motion decision based on the record then before us or established that we misapplied relevant law or policy. As such, he has not satisfied the motion to reconsider requirements specified under 8 C.F.R. § 103.5(a)(3), and we will dismiss the instant motion to reconsider.

B. Motion to Reopen

Similarly, we will dismiss his instant motion to reopen the proceeding. *See* 8 C.F.R. § 103.5(a)(2). In support of the motion, the Applicant submits a December 2021 updated mental health evaluation concerning his spouse, articles about Brazil, a statement entitled "Financial Hardship Summary for [the Applicant's Spouse] and [the Applicant]," and another statement entitled "Mental Hardship Summary." These documents are insufficient to show that his spouse would experience extreme hardship upon the denial of his Form I-601 waiver application.

According to the December 2021 updated mental health evaluation, the Applicant's spouse last met with a mental health professional over a year ago in September 2020, and around that time her eating disorder returned after she "had stopped purging (bulimia) for a long time." The Applicant's spouse reported to the mental health professional that her eating disorder "continued for about seven months." She also indicated that she has been "using alcohol to drown her feelings of loneliness and emptiness," and that she lives in Florida after the Applicant returned to Brazil, and "feels nothing is stopping her from drinking." The December 2021 evaluation discusses the Applicant's spouse's mental and emotional struggles stemming, in part, from childhood trauma, separation from the Applicant, the death of her mother, and family discourse involving her siblings. The evaluation concludes that she suffers from major depressive disorder and generalized anxiety disorder. The mental health professional recommends that "she receive therapy aimed at eliminating, or at least minimizing the depression and anxiety she has been feeling throughout her life." The evaluation also reveals that she has been financially supporting herself by working in Florida, that she was able to visit the Applicant in Brazil in October 2021, and that the Applicant has found employment in Brazil.

[1] We also questioned the need for the Applicant's spouse to regularly seek medical and mental health services upon relocation to Brazil, as she had not regularly sought such services while in the United States.

In addition to the December 2021 evaluation, the Applicant submits other motion evidence, including a document showing that individuals in Brazil do not have the same economic advantages as those living in the United States; a document discussing psychological treatments in Brazil, specifically in [redacted]; a document indicating the distance between [redacted] and [redacted] where the Applicant resides; and statements summarizing the Applicant and his spouse's claimed financial and mental hardship.

As noted, 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. *See* 9 *USCIS Policy Manual*, *supra*, at B.4(B). In this case, the record does not contain a statement from the Applicant's spouse indicating whether she intends to remain in the United States or relocate to Brazil upon the denial of his Form I-601 waiver application. The Applicant must therefore establish that if he were denied the wavier, his spouse would experience extreme hardship both upon separation and relocation.

According to the September 2020 mental health evaluation, the Applicant returned to Brazil in June 2020, while his spouse has continued to live in Florida. The evidence thus shows that his spouse has been living apart from him for almost two years. The December 2021 updated mental health evaluation discusses the challenges that his spouse has faced in the Applicant's absence. However, the evaluation also reveals that she has been gainfully employed and financially supporting herself while living in Florida, and that she was able to visit the Applicant in Brazil at least once, in October 2021. While we recognize that the Applicant's spouse has been negatively affected upon separation from the Applicant, based on the record as a whole, we cannot conclude that when considered in the aggregate, that hardship goes beyond the common results of separation from a loved one and rises to the level of extreme hardship. *See Matter of Pilch*, 21 I&N Dec. at 630-31.

Moreover, the motion evidence similarly does not support a finding that the Applicant's spouse would experience extreme hardship if she relocated to Brazil. The December 2021 updated mental health evaluation provides that the Applicant is employed in Brazil. This information contradicts his claim on the statement entitled "Financial Hardship Summary for [the Applicant's Spouse] and [the Applicant]" that neither he nor his spouse would have a source of income if they both lived in Brazil. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (requiring resolution of inconsistencies in the record with independent, objective evidence pointing to where the truth lies). The Applicant has not shown that his income is insufficient to support both him and his spouse if she relocates to Brazil.

Additionally, the December 2021 evaluation explains that while his spouse visited him in Brazil, she required medical attention, and was able to "have someone there to translate . . . her medical condition or concerns" to "the emergency medical technicians." This evidence does not support the Applicant's claim that his spouse would not be able to receive medical and/or mental health treatments in Brazil because she does not speak Portuguese. Likewise, the documentation that the Applicant presents on motion concerning Brazil and its availability of psychological treatments is insufficient to confirm that without knowing Portuguese, his spouse would not be able to receive treatment through the use of a translator or through the assistance of an English-speaking medical provider. Also, as discussed in our prior decision, the record lacks sufficient evidence confirming that the Applicant's spouse needs frequent medical attention, as it shows that she visited a mental health professional in September 2020,

and then over a year later, in December 2021. The record does not demonstrate that she is currently in need of continuous treatment.

Furthermore, the motion evidence does not indicate that the Applicant's spouse experienced any violence or danger while visiting him in 2021, or while she lived and worked in Brazil previously. This does not support his contention that if relocated to Brazil, she would likely experience robbery, kidnapping and extortion. The record, although shows that the Applicant's spouse would likely experience hardship if relocated to Brazil, is insufficient to demonstrate that the level of hardship would exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. at 630-31 (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).

On motion, the Applicant has failed to establish by a preponderance of the evidence that denial of his Form I-601 waiver application would result in extreme hardship to his spouse both upon separation and relocation. *See* Section 212(h)(1)(B) of the Act; *Matter of Chawathe*, 25 I&N Dec. at 375; *see also* 9 *USCIS Policy Manual*, *supra*, at B.4(B). Based on this finding, we need not determine if the Applicant merits a waiver as a matter of discretion. Accordingly, we will dismiss the instant motion to reopen the proceeding as he has not shown eligibility for the Form I-601 waiver.

III. CONCLUSION

The Applicant has not established that our previous motion decision was based on an incorrect application of law or policy, or that it was incorrect based on the evidence then before us. Therefore, he has not met the requirements for a motion to reconsider the matter. *See* 8 C.F.R. § 103.5(a)(3). In addition, the Applicant has not submitted new evidence that sufficiently establishes that his spouse would experience extreme hardship upon separation from him or relocation with him to Brazil. Therefore, he has not met the requirements for a motion to reopen the proceeding. *See* 8 C.F.R. § 103.5(a)(2).

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.