U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23133650

Date: NOV. 10, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has been found inadmissible for crimes involving moral turpitude and seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The Nebraska Service Center Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility.

The Director concluded the Applicant's convictions were for violent or dangerous crimes and that he did not merit a favorable exercise of discretion. The Applicant filed a combined motion to reopen and reconsider that the Director dismissed, and we dismissed a subsequent appeal. The matter is now before us on a motion to reopen and reconsider. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motions.

I. LAW

A foreign national convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (CIMT) (other than a purely political offense), or an attempt or conspiracy to commit such a crime is inadmissible. Section 212(a)(2)(A) of the Act. There is a discretionary waiver of this inadmissibility ground if refusal of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act. If the foreign national demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

A determination of whether denial of admission will 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) (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. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

Once the foreign national demonstrates the requisite extreme hardship, they must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N 296, 299 (BIA 1996). We must balance the adverse factors evidencing an applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted).

The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country while in compliance with our immigration laws (particularly where residency began at a young age), evidence of hardship to the foreign national and their family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

With respect to the discretionary nature of a waiver, when a foreign national has been convicted of a violent or dangerous crime, the regulations governing the exercise of discretion are set forth in 8 C.F.R. § 212.7(d), and generally preclude a favorable exercise of discretion except in extraordinary circumstances, which include situations in which the foreign national has established "exceptional and extremely unusual hardship" if the benefit is denied, or situations in which overriding national security or foreign policy considerations exist. However, even if an applicant can demonstrate the existence of these extraordinary circumstances, depending on the gravity of the applicant's offense, consent to their admission as a matter of discretion may still be denied.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). According to the Instructions for Notice of Appeal or Motion (Form I-290B, Notice of Appeal or Motion), any new facts and documentary evidence must demonstrate eligibility for the required immigration benefit at the time the application or petition was filed. A motion to reopen that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original application. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

A motion to reconsider must: (1) state the reasons for reconsideration, (2) be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law

or policy, and (3) establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

The record reflects in 1990, the Applicant was convicted of sexual assault in the fourth degree in violation of section 53a-73a(1)(B) of the General Statutes of Connecticut and received a six-month sentence for the offense. Additionally, he was convicted of assault in the third degree in violation of section 53a-61 of the General Statutes of Connecticut for which he received a five-month consecutive sentence. The court suspended the execution of both sentences, and sentenced the Applicant to three years of probation for each conviction. A consular officer of the U.S. Department of State determined that these convictions were for crimes involving moral turpitude and that the Applicant was inadmissible under section 212(a)(2)(A)(i)(I).

A. Applicant's Burden Relating to Conviction Record

Accompanying the current motions, the Applicant's counsel asserts that because official conviction records are not part of the record because they no longer exist, that we should accept counsel's statements "as evidence of the nature of the charges against him." The motion brief does not offer any legal analysis or citations to support this request. We reiterate a point from our appellate decision where we informed the Applicant that foreign nationals bear the burden of resolving ambiguities in their criminal record and demonstrating that they were not convicted of a disqualifying offense.

Therefore, in the context of demonstrating admissibility under the Act, the burden rests with the filing party to show that a conviction does not have any adverse effects on their eligibility. In line with that requirement is their responsibility to provide any documentation that illustrates all the elements of the crime that they were convicted of under a statute of conviction that contained some disqualifying crimes (e.g., the indictment, jury instructions, or plea agreement and colloquy). *Pereida v. Wilkinson*, 141 S. Ct. 754, 763–64 (2021). Considering the Applicant has not provided sufficient materials to demonstrate his convictions are not disqualifying, he has not met his burden of proof.

B. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. *See* 8 C.F.R. 103.5(a)(2). Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." The Applicant offers no new facts that were not presented in the previous proceedings, nor does he support those with documentary evidence. With his motion, he merely repeats a point he raised in the appeal brief; a point we did not accept at that time. Accordingly, we will dismiss the motion to reopen.

C. Motion to Reconsider

A motion to reconsider must state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). The Board of Immigration Appeals (BIA) generally provides that a motion to reconsider asserts that at the time of the previous

decision, an error was made. It questions the decision for alleged errors in appraising the facts and the law. The very nature of a motion to reconsider is that the original decision was defective in some regard. *See Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006). A motion to reconsider is based on the existing record and applicants may not introduce new facts or new evidence relative to their arguments. *Id.*

Additionally, a motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *O-S-G-*, 24 I&N Dec. at 58. Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

On motion, the Applicant submits a statement mirroring an argument he made on appeal. The Applicant's motion does not meet the applicable requirements of a motion to reconsider because he does not establish that our decision was based on an incorrect application of law or policy. *See* 8 C.F.R. § 103.5(a)(3). In particular, the Applicant does not cite to any statute, regulation, pertinent precedent decision, binding federal court decision, USCIS policy statement, or other applicable authority to establish that the original decision was defective in some regard. As he did not demonstrate that we incorrectly dismissed his appeal, the Applicant did not establish that he meets the requirements of a motion to reconsider. Therefore, we will dismiss the motion to reconsider.

III. CONCLUSION

The Applicant has not demonstrated that we should either reopen the proceedings or reconsider our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.