U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24114517

Date: JAN. 11, 2023

Decision Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a citizen of Nigeria currently residing in the United States, applied to adjust status to that of a lawful permanent resident (LPR). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for a crime involving moral turpitude and seeks a waiver of that inadmissibility under Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h).

The Director of the San Fernando Valley Field Office in Chatsworth, California denied the application, concluding that there was no purpose in adjudicating it because the approval of the Applicant's underlying immigrant visa petition had been revoked. We dismissed a subsequent appeal, determining that the Director properly denied the application in the exercise of discretion. The matter is now before us on a motion to reconsider.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reconsider must establish that our 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.

The Applicant sought to adjust her status to LPR based on a Form I-130 immigrant relative visa petition filed on her behalf by her U.S. citizen husband. The approval of this visa petition was revoked due to the Director's finding that the Applicant had entered into her previous marriage for the purpose of evading immigration laws and that she was therefore ineligible for an immigrant visa pursuant to section 204(c) of the Act. The Applicant's husband appealed this decision, and the matter is currently pending with the Board of Immigration Appeals (BIA). The Director also denied her Form I-485 adjustment of status application, due to the revocation of the approval of the visa petition. The Applicant later filed motions to reopen and reconsider this decision, which the Director denied, reaffirming his previous decision to deny the adjustment application.

We dismissed the appeal, determining that since the Applicant's visa petition was revoked and her adjustment application was denied, the purpose of the waiver application (removing the inadmissibility bar to adjustment of status or issuance of an immigrant visa) could not be served in this case. We concluded that the Director properly denied the waiver application as a matter of discretion. For the sake of brevity, we incorporate our previous analysis of the record and will repeat only certain facts and evidence as necessary to address the Petitioner's assertions on motion to reconsider.[1]

On motion, the Applicant resubmits materials about the revocation of her visa petition and the denial of her adjustment application, contending again that these adverse decisions were made in error. As discussed in our previous decision, the issue of whether these decisions were proper was beyond the scope of our appellate review of the waiver application, thus we did not address them on appeal. The Applicant does not contend on motion that our decision not to address them was in error based on an incorrect application of law or policy.

She further suggests on motion that we could hold this matter in abeyance pending the outcome of the appeal of her visa petition revocation. The Applicant has identified no relevant authority requiring us to hold her motion to reconsider our previous decision in abeyance pending adjudication of her appeal by the BIA, and we decline to do so.

The Applicant also reasserts arguments previously presented on appeal that her waiver application "is not moot and needs consideration on merits." However, she does not make any new arguments, nor does she contend that our last decision was based on an incorrect application of law or policy; therefore, the submission does not meet the requirements of a motion to reconsider. 8 C.F.R. § 103.5(a)(3). Accordingly, the waiver application remains denied.

ORDER: The motion to reconsider is dismissed.

[1] Our previous decision in this matter was ID# 21286453 (AAO JUL. 7, 2022).