U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 20799028

Date: APR. 12, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico, has applied to adjust status to that of a lawful permanent resident. 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 fraud or misrepresentation and seeks a waiver of that inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).[1]

The Director of the Los Angeles, California Field Office denied the application, concluding that the record did not establish that the Applicant's qualifying relative, her U.S. citizen mother, would experience extreme hardship if the waiver was not granted. We then dismissed the Applicant's appeal of the Director's decision on the same grounds. The matter is now before us on a combined motion to reopen and reconsider.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. §1361. Upon review, we will dismiss both motions.

## I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original application. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

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

[1] Any noncitizen 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, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary 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 noncitizen. Section 212(i) of the Act.

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.

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).

## II. ANALYSIS

The issues on motion are (1) whether the Applicant has presented new facts and evidence sufficient to demonstrate that her mother will experience extreme hardship upon denial of the waiver application; and (2) whether she has shown that our prior 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. We incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Applicant's claims on motion.

### A. Motion to Reopen

In our appeal decision, we concluded that the Applicant had not established that her mother would experience extreme hardship in the event of separation. In support of the motion to reopen, the Applicant provides a letter from her daughter. The letter writer states that while her grandmother (the Applicant's mother and qualifying U.S. citizen relative) lives with the Applicant's brother, she feels most comfortable with the Applicant's care, which includes help with transportation for grocery shopping and doctor's appointments. The letter further states that none of the Applicant's other siblings look after the qualifying relative in the same way the Applicant does.

This letter does not contain new facts which demonstrate that the qualifying relative will suffer extreme hardship if separated from the Applicant. The underlying appeal included letters from the qualifying relative and from the Applicant's siblings which stated the same facts regarding the Applicant's relationship with her mother. As previously noted, a motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The Applicant has not submitted new facts on motion and, therefore, we will dismiss the motion to reopen.

### B. Motion to Reconsider

In support of the motion to reconsider, the Applicant provides a statement in her Form I-290B and a brief from her attorney. In these materials, the Applicant asserts that we did not correctly apply agency policy when analyzing the evidence on appeal because we did not base our conclusions on the totality

of the evidence provided, including the qualifying relative's age, the fact that she was widowed four years ago, and the particular relationship between her and the Applicant. We disagree.

The record indicates that the qualifying relative is 86 years old and lives with her son, the Applicant's brother. The Applicant lives about a block away, and her four sisters live 30 minutes to six hours away. The record further indicates that Applicant transports her mother to medical appointments and grocery shopping trips, cooks, cleans, and does her mother's laundry. On appeal, the Applicant submitted statements from her siblings stating either that they would not be able to care for their mother if the Applicant moved to Mexico, or that this care would not be of the same high quality as the care that the Applicant provides, due to the fact that they lived farther away from their mother and had their own work and family commitments.

The statement from the Applicant's brother, who lives with the qualifying relative, stated that while "maybe" he could provide care for his mother, "it would not be the same for my mom because of the time" that she and the Applicant spend together. The statements of the Applicant's other siblings and of her mother similarly emphasized the close and loving relationship between the Applicant and her mother. However, they did not provide sufficient information to indicate how, specifically, the hardship of the Applicant's mother would rise beyond the common effects of removal.

On motion, the attorney's brief states that if the Applicant's siblings do end up providing care to their mother, "they might not do it with the same love and care and consistency and time as Applicant does and might just do it hesitantly and infrequently and this could negatively affect the qualifying relative's emotional health and cause her extreme hardship in feeling like a burden to her children." The "emotional hardship caused by severing family…ties is a common result of deportation." *Pilch*, 21 I&N Dec. at 631 (citations omitted). Speculation that the Applicant's siblings may not provide the same level of care as the Applicant provides, and that this may cause the qualifying relative emotional distress, does not suffice to meet the Applicant's burden of demonstrating that if the Applicant moves back to Mexico, the qualifying relative will more likely than not experience emotional hardship that rises to extreme levels.

Similarly, while the brief provided on motion states that the distress caused by separation from her daughter could "could be detrimental to [qualifying relative's] health", the medical evidence provided does not indicate how, specifically, this would be the case. The letter from the qualifying relative's doctor which was provided on appeal indicated that she has various chronic conditions, but did not specify how these conditions affect her day-to-day life beyond needing to take medication. Additionally, while some of the statements provided on appeal indicated that the Applicant helps her mother with things that her mother can no longer do due to her age, they don't specify what activities she cannot do without the Applicant's help. The evidence of record at the time of our appeal decision did not suffice to establish what specific medical hardship the qualifying relative will suffer if the Applicant is denied admission. This does not meet the Applicant's burden of demonstrating that the qualifying relative's hardship would more likely than not rise beyond what is commonly experienced as a result of removal.

As detailed in our appeal decision, the totality of the record does not demonstrate that the claimed hardships of the Applicant's qualifying relative rise to the level of extreme hardship when considered individually or cumulatively. The Applicant has not established that our previous decision was based

on an incorrect application of law or policy and that it was incorrect based on the evidence then before us. *See* 8 C.F.R. § 103.5(a)(3). Therefore, we will dismiss the motion to reconsider.

## III. CONCLUSION

The Applicant has not overcome the grounds underlying our prior decision with new facts, or shown that the prior decision was in error due to an incorrect application of law or policy. Therefore, the motion to reopen and the motion to reconsider will be dismissed.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.