U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21035255

Date: FEB. 9, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of El Salvador, 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(i), 8 U.S.C. § 1182(i), for fraud or misrepresentation.

The Director of the Los Angeles, California Field Office denied the waiver, concluding that the record did not establish the Applicant's qualifying relative (his U.S. citizen spouse) would experience extreme hardship if the waiver is not granted. We agreed with the Director and dismissed the Applicant's appeal. The Applicant has filed a motion to reopen and reconsider our decision. On motion, the Applicant submits additional evidence and maintains that his spouse will experience extreme hardship if his waiver is denied.

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 the motion to reopen and reconsider.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *Id.* § 103.5(a)(3).

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. 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 foreign national. Section 212(i) of the Act.

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). 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).

II. ANALYSIS

In our November 2021 decision, we agreed with the Director that the Applicant had not demonstrated that his U.S. citizen spouse would experience extreme hardship if his waiver were denied. We noted that the Director's decision acknowledged both the "Psychological Evaluation" (evaluation) from a licensed marriage and family therapist and the diagnosis of adjustment disorder with mixed anxiety and depressed mood, moderate to severe insomnia, and separation anxiety disorder. In addition, we explained that while the evaluation discussed the Applicant's spouse's medical issues, the Applicant did not provide any evidence such as copies of her prescriptions and medical reports from her physician to corroborate her stated illnesses. We also determined that the Applicant had not demonstrated that his spouse's mental health issues affect her ability to continue her university studies or to carry out other activities, or that she requires his assistance as a result. Furthermore, although the evaluation discussed the financial hardship the Applicant's spouse would suffer, the Applicant did not submit financial records to corroborate her claims, including that he is "the sole provider." We stated that without a complete picture of the couple's financial situation, the Applicant had not shown that the level of economic hardship his spouse may experience would exceed that which is usual or expected in circumstances involving removal or inadmissibility. We concluded that the Applicant had not provided sufficient detail regarding the actual impact of any hardships his spouse may experience in her daily life, nor did he offer evidence that the hardships she may experience would rise to the level of extreme.

A. Motion to Reopen

The Applicant presents additional evidence on motion relating to his spouse's medications. He offers a drug prescription printout from [redacted]'s Pharmacy listing his spouse's medications, including a prescription for Buspirone HCL, an anxiety medication. While we acknowledge the Applicant's spouse has been prescribed medication to treat her anxiety, the Applicant has not demonstrated that this condition affects her ability to work, attend school, or carry out other daily activities, or that she requires the Applicant's assistance as a result. The evidence does not show that the Applicant's spouse's situation, or the symptoms she is experiencing, exceeds that which is usual or expected in circumstances involving removal or inadmissibility and rises to the level of extreme hardship.

Although we are sympathetic to the Applicant's spouse's circumstances, the Applicant has not demonstrated that separation from his spouse would result in emotional, medical, or financial concerns for her that rise to the level of extreme hardship. Even considering all of the evidence in its totality, the record remains insufficient to show that the Applicant's spouse's claimed financial, emotional, and medical hardships go beyond the common results of separation from a loved one and rise to the level

of extreme hardship if they were separated due to his inadmissibility. Accordingly, while the Applicant has offered additional evidence, this documentation does not demonstrate new facts showing extreme hardship to his U.S. citizen spouse, and therefore he has not overcome our prior determination.

B. Motion to Reconsider

The Applicant argues that "[t]he denial of the hardship waiver in this case was in error." His motion includes a January 2018 "Practice Advisory" from the Immigrant Legal Resource Center, entitled "Understanding Extreme Hardship in Waivers – What Extreme Hardship Is and How to Prove It." He states that this document "addresses the standard for extreme hardship waivers" and that "the citations listed are hereby incorporated as part of [his] appellate arguments." The Applicant, however, does not identify any specific information in this document that demonstrates our appellate decision was based on an incorrect application of law or USCIS policy. He further argues that "as the practice advisory attached shows, the evaluation of hardship requires consideration of several relevant factors," but he does not specify any "relevant factors" that our appellate decision erred in addressing or disregarded.

In addition, the Applicant points to *Matter of Piggott*, 15 I&N Dec. 129, 131 (BIA 1974), in which it was determined that, upon relocation to his native country, "the male respondent would be unable to obtain employment in Antigua, that neither of the respondents would be able to provide for their own necessities in Antigua, that the respondents' minor United States citizen children would suffer because of the respondents' lack of ability to provide them with proper food and living facilities in Antigua, and that the school system in Antigua is far inferior to that in the United States." It was also determined that "the respondents' younger citizen daughter is afflicted with rheumatic fever and is under a physician's care, and that equal medical care is not available in Antigua." *Id.* The Applicant contends that his situation is similar to that of the respondents in the cited matter because his spouse "is under the medical care of [redacted]." We note that in *Matter of Piggott*, the respondents' U.S. citizen child's rheumatic fever was not the only factor considered in the extreme hardship determination. The BIA's finding in *Matter of Piggott* is significantly discernable from the present matter, and the Applicant has not demonstrated that the facts of that case are similar or identical to those in the matter currently before us.

The Applicant's motion does not establish that we erred in concluding he had not demonstrated that his U.S. citizen spouse would experience extreme hardship if his waiver were denied. He therefore has not met the requirements for a motion to reconsider as he has not shown that we erred in our previous decision based on the record before us on appeal. In addition, the motion to reconsider does not establish that our dismissal of his appeal was based on an incorrect application of law, regulation, or USCIS policy.

III. CONCLUSION

The Applicant has not shown that we erred as a matter of law or USCIS policy in dismissing his appeal, nor has he established new facts relevant to our decision that would warrant reopening of the proceedings. Consequently, we have no basis for reopening or reconsideration of our appellate decision. The Applicant's appeal therefore remains dismissed, and his underlying application remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.