U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21539361

Date: JUL. 18, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The Director of the San Bernardino, California Field Office denied the application, concluding the Applicant did not establish that her lawful permanent resident spouse, the only qualifying relative, would suffer extreme hardship because of her inadmissibility. The Applicant filed an appeal which we dismissed. We dismissed the Applicant's subsequent motion to reopen or reconsider, finding that the Applicant had not sufficiently addressed or overcome the deficiencies discussed in our prior decision. The Applicant now submits a motion to reopen.

Upon consideration of all the evidence submitted, we will dismiss the motion.

I. LAW

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies the above requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The issue on motion is whether the Applicant has presented new facts or evidence sufficient to demonstrate that she is eligible to obtain a waiver of inadmissibility. We incorporate our prior decisions by reference and will repeat only certain facts and evidence as necessary to address the Applicant's claims on motion.

As previously discussed, 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. Establishing extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the

denial of the waiver. The applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual.

In our decision to dismiss the Applicant's appeal, we determined that the Applicant's spouse did not definitively state whether he intended to remain in the United States or relocate abroad if the Applicant's waiver application was denied and thus, extreme hardship in the event of relocation and separation would need to be established. We reviewed the Applicant's claims regarding hardship to her spouse and determined that she had not established extreme hardship to her spouse in the event of separation. We informed the Applicant that "the record does not establish the severity of [her spouse's] emotional hardship or the effects on his daily life and does not indicate that that he could not continue his mental health treatment in the United States." We also acknowledged the Applicant's spouse's medical diagnoses, but noted that there was "no indication from the Applicant's spouse's medical records or from a treating physician that he suffers any functional impairment or requires the Applicant's daily assistance due to any of his medical conditions." In addition, we explained that the record lacked documentation "detailing the household income and expenses or the Applicant's spouse's financial contribution to those expenses" and, as a result, it was "difficult to assess the financial hardship [he] would experience if the waiver is denied."

On motion to reopen and reconsider, we determined that the new evidence did not overcome our prior stated deficiencies in the record or establish that the Applicant's spouse would suffer extreme hardship upon separation. For example, although the Applicant submitted proof of her husband's COVID-19 diagnosis and information regarding the potential long-term effects of the disease, she did not provide any evidence to establish what effect, if any, COVID-19 has actually had on him. Further, without documentation of the household income, information regarding the cost of flights to Indonesia and statements from his therapist and their children did not establish the financial impact of such events. We also found that the record did not establish the daily assistance the Applicant's spouse required as a result of his medical and psychological diagnoses. Similarly, while the provided letters claimed that the Applicant's spouse relied on her to assist him "daily by ensuring he takes his medication and attends his medical appointments," the submitted documentation did not establish that he would be unable to perform such functions without the assistance of his wife and eldest daughter. Nor had the Applicant established that her spouse would not be able to continue mental health and medical treatment in the United States during her absence. We also determined that the Applicant had not established on motion that our prior decision to dismiss the appeal was inconsistent with applicable law and policy based on the record at that time. We concluded that the Applicant had not shown she was eligible for the benefit sought.

With the instant motion, the Applicant's spouse again does not specifically indicate whether he intends to remain in the United States or relocate abroad if the Applicant's waiver application is denied and thus, extreme hardship in the event of relocation and separation would need to be established.

Regarding relocation, the Applicant's spouse stated in his December 2019 declaration that he feared that he would not be able to receive proper health care in Indonesia due to poor health conditions there. However, in the instant motion, the Applicant has not addressed the deficiencies regarding relocation raised by the Director in the decision to deny the waiver application. As noted by the Director, the

documentation submitted by the Applicant relating to country conditions in Indonesia is general in nature and does not establish that the Applicant's spouse specifically would experience extreme hardship there. We note that the Applicant's spouse was born and raised in Indonesia, and did not relocate to the United States until he was in his late 30s. The record thus does not establish that a return to his native country would cause the Applicant's spouse extreme hardship.

Regarding separation, the Applicant's spouse, currently 64 years old, contends that he will experience emotional, psychological, and financial hardship were he to remain in the United States while his spouse relocates abroad due to her inadmissibility. The Applicant's spouse details that he married the Applicant in 1985 and long-term separation from her after more than three decades together would worsen his diagnosed depression and anxiety. The Applicant's spouse further explains that he has been diagnosed with multiple medical conditions, including type 2 diabetes, and he needs his wife to help care for him. Regarding financial hardship, the Applicant's spouse contends that he relies on the Applicant for financial support, as she is the primary caregiver. Without his spouse, the Applicant's spouse maintains that he would not be able to support himself and his children would not be able to assist him in a significant way due to their own obligations and financial commitments.

The Applicant's children echo their father's sentiments on motion and reaffirm their contention that were their mother to relocate abroad, their father would experience emotional, medical, and financial would be at risk. They detail the critical role their mother plays in their father's daily life, and while they acknowledge that they may be able to help their father to a certain extent, they are not able to provide the daily care and financial support their father would need if their mother lived abroad.

With the instant motion to reopen, the Applicant has submitted financial documentation to establish that she is the primary financial provider for her spouse. The Applicant has also submitted updated medical and mental health documentation pertaining to her spouse. The Applicant has also submitted, as noted above, updated letters from her children outlining the hardships their father will experience were their mother to relocate abroad, and explaining why they are not able to step in full-time to care for their father emotionally, medically, and financially, due to their own obligations.

While we acknowledge the documentation submitted on motion establishes hardships to the Applicant's spouse were he to separate from the Applicant due to her inadmissibility, the record does not establish that the Applicant's spouse intends to separate from the Applicant if she is denied admission. Thus, even if the record established extreme hardship to the Applicant's spouse upon separation, in the absence of a statement that he intends to separate from the Applicant, we cannot conclude that such hardship would actually result from denial of her waiver application.

As the Applicant has not established extreme hardship to her spouse in the event of relocation and in the absence of any evidence that her spouse would remain in the United States were the Applicant to relocate abroad, we cannot conclude that the denial of the waiver application would result in extreme hardship to a qualifying relative. As such, no purpose would be served in determining whether the Applicant merits a waver as a matter of discretion. Accordingly, the waiver application remains denied.

ORDER: The motion to reopen is dismissed.