U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20814031

Date: JUN. 03, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of Tunisia currently residing in the United States, has 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 fraud or misrepresentation and seeks a waiver of that inadmissibility. Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the San Bernardino Field Office denied the application, concluding that the record did not establish that the Applicant's qualifying relative, his U.S. citizen wife, would experience extreme hardship if he were refused admission. We dismissed the Applicant's appeal and subsequent motion on the same grounds. The matter is now before us on a second 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 the motion.

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 previously been 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 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 benefit.

Any noncitizen who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, admission to the United States, or another 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). USCIS may waive this ground of inadmissibility in its discretion if refusal of admission would cause extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the noncitizen. 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).

II. ANALYSIS

The Applicant does not contest his inadmissibility for fraud and misrepresentation. Instead, he seeks a waiver of inadmissibility under section 212(i) of the Act, stating that his wife will suffer extreme hardship if his application is denied.

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. Demonstrating 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/legal-resources/policy-memoranda. In the present case, the record is unclear whether the Applicant's spouse would remain in the United States or relocate to Tunisia if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

The issues on motion are whether the Applicant has demonstrated eligibility based on new facts submitted on motion or, alternatively, if our decision was based on an incorrect application of law or policy given the evidence on record at the time of that decision.

A. Motion to Reopen

In support of his motion to reopen, the Applicant states that the circumstances in his case have changed, thus giving rise to new facts. According to the brief submitted on motion, this is due to changes his spouse's health and financial circumstances and changes in country conditions in Tunisia.

As the Applicant noted in his underlying application, appeal, and previous motion, his spouse has been diagnosed with Addison's disease. As support for the motion to reopen, he submitted documentation of his spouse's visits to the emergency department in 2018 and 2019, two years before the submission of the motion. Since previously submitted evidence already established that the Applicant visited the emergency department at those times, this is not considered new evidence.

The motion also includes a letter from [redacted] dated November 22, 2021. The letter states that the Applicant's spouse's "condition is getting complicated to an extent that it requires her to be under continuous round the clock supervision and care." Additionally, the declaration from the Applicant's spouse on motion states that since March 2020, she has visited the hospital monthly and needed two months of total bed rest that forced her to shut down her day care business. The Applicant states that due to his spouse's worsening health, his presence in the United States is required to provide care for her and she will therefore experience extreme hardship if he returns to Tunisia without her.

However, the other medical evidence provided does not support these contentions. The most recent hospital visit documentation in the record is from March 2020, when the Applicant's spouse tapered down the dose of a medication necessary to control her condition. The discharge instructions from that visit do not include any activity or diet restrictions or indications that the Applicant's spouse would need continuous monitoring and care at home from the Applicant. The evidence submitted on motion does not demonstrate that his spouse's medical condition has declined since our prior decision in October 2021.

We acknowledge the evidence the Applicant has provided about the changing political situation and unrest in Tunisia. However, we note that the State Department has not issued a security alert about demonstrations in Tunisia since December 2021. The current State Department travel advisory level for Tunisia is "Level 2: Exercise Increased Caution," stating that some areas of the country are at an increased risk for terrorism.[1] The Applicant has not specified where in Tunisia he and his spouse would relocate to if his waiver application were denied, and so it is not possible to determine whether they would be especially at risk.

The evidence of record does not demonstrate that the country conditions in Tunisia have changed sufficiently to constitute extreme hardship for the Applicant's spouse. Furthermore, even if the Applicant had demonstrated that conditions in Tunisia would cause the Applicant's spouse extreme hardship, which he has not, the Applicant has not demonstrated that his spouse would also experience extreme hardship if she stayed in the United States.[2]

The Applicant contends that due to the COVID-19 pandemic, his spouse's home-based day care business has declined, causing a worsening in her financial circumstances and causing her to rely on him as the sole employee of the business because she had to fire her other workers. To support this claim, he submits:

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[1] Tunisia Travel Advisory, U.S. Dep't of State – Bureau of Consular Affairs, https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/tunisia-travel-advisory.html (last visited June 1, 2022).

[2] As noted above, because the record does not specify if his spouse would stay in the United States or relocate to Tunisia if his waiver application were denied, the Applicant must establish that such a denial would result in extreme hardship to his spouse in both scenarios.

- An electricity bill dated October 12, 2021, with a balance of $2,921.52 and a disconnection notice;
- A water bill dated October 21, 2021, with a balance of $2,033.10 and a delinquency notice; and
- Emails between the Applicant's spouse and her landlord dated July and August 2021 and discussing late rent payments.

We acknowledge the evidence indicating that the Applicant's spouse was behind on her bills as of October 2021. However, there is insufficient documentation on record to establish how much the day care business declined, how much income was lost, or to what extent losing the Applicant as an employee would cause his spouse financial hardship. Further, the record does not establish why the Applicant, who was an accountant in Tunisia, would be unable to support his spouse financially from there. While financial hardship is a relevant factor in these proceedings, to be considered "extreme," the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. at 631. 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. at 882. The new evidence provided with the motion, considered in its totality, does not demonstrate that upon separation and relocation, the Applicant's spouse would experience hardship beyond the common results of the removal of a close family member, rising to the level of extreme hardship.

On motion, the Applicant has not stated new facts, supported by documentary evidence, demonstrating that his spouse would undergo extreme hardship if the waiver application were denied. Therefore, the motion to reopen is dismissed.

B. Motion to Reconsider

In the brief submitted on motion, the Applicant states that we erroneously failed to properly consider medical evidence regarding his spouse's ill health. The brief states that the Applicant's spouse was hospitalized eleven times between May 6, 2017, and November 8, 2019. We acknowledge that during this time period, the Applicant's spouse repeatedly visited the emergency department with symptoms due to her Addison's disease. However, the record does establish how the Applicant's physical absence would cause his spouse extreme medical hardship.

As noted above, the record does not establish that the Applicant's spouse has needed to visit the emergency department after March 2020, over a year before the current motion was filed. The documentation of record regarding Addison's disease states that this condition can be managed with medication.

We acknowledge the printout from one of the Applicant's emergency department visits, which states that patients with Addison's disease should have a close friend or family member who understands the disease, how it is treated, and the signs that emergency care is needed.[3] However, while the motion

[3] It is noted that other printouts on record regarding Addison's disease do not suggest this. Instead, they only state that patients should take measures such as carrying emergency medication and having a medical alert bracelet or ID card to alert others to their medical needs.

contends that the Applicant has been fulfilling this role and is the only one who can do so, the evidence submitted on motion is insufficient to support this claim. On motion, the Applicant highlights a medical note stating that he was present and involved in the medical decision-making for his spouse's August 24, 2018, emergency department visit. However, the documentation of his spouse's other emergency department visits does not mention the Applicant's presence, and the notes from her November 8, 2019, visit indicate that her daughter was present and involved in discussing her mother's care. Further, as we noted in our prior motion decision, even assuming the Applicant's spouse does need assistance, the record does not show that she cannot obtain it from someone other than the Applicant. The current motion does not establish that our prior decision was based on an incorrect application of law or policy based on the evidence on record at the time of the decision.[4] Therefore, the motion to reconsider is dismissed.

III. CONCLUSION

The Applicant has not overcome the grounds of our prior decision. Because the new evidence provided on motion is not sufficient to establish that the Applicant's spouse would experience extreme hardship if he were denied admission to the United States, the Applicant has not met the requirements for a motion to reopen. Furthermore, the Applicant has not established that our prior decision was based on an incorrect application or law or policy. Therefore, he has not met the requirements for a motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[4] Because the Applicant has not established that his spouse will experience extreme medical hardship if they are separated, we need not address the issue of medical hardship if she were to move to Tunisia. *See INS v. Bagmaasbad*, 429 U.S. 24, 25 (1976) ("agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").