U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20664206

Date: MAR. 8, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Canada, has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides for a waiver of this inadmissibility if denial of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen.

The Director of the Baltimore, Maryland, Field Office denied the application, concluding that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. The Director also concluded that the record did not establish, as required, that denial of admission would result in extreme hardship to the Applicant's U.S. citizen spouse, the only qualifying relative. We dismissed a subsequent appeal. On a combined motion to reopen and motion to reconsider, the Applicant denies that she is inadmissible under 212(a)(6)(C)(i) of the Act and asserts that denial of admission would result in extreme hardship to her spouse.

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 combined 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 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 time of the decision. 8 C.F.R. § 103.5(a)(3). We do not consider new facts or evidence in a motion to reconsider.

II. ANALYSIS

We address the combined motion separately below. We noted on appeal that the record does not contain a statement from the Applicant's qualifying relative spouse that indicates whether he intends to remain in the United States or relocate to Canada if the Applicant's waiver application is denied. Again, on combined motion, the record contains no such statement from the Applicant's qualifying relative spouse. Accordingly, we limit our analysis to: 1) whether the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act; and 2) whether the Applicant's spouse would experience extreme hardship upon both separation and relocation.

A. Motion to Reopen

New evidence in support of the motion to reopen includes the following: a report of the results of a polygraph taken by the Applicant in November 2021; a professional counselor's evaluation of the Applicant's spouse dated November 2021; and a seven-sentence letter from a nurse practitioner to the Applicant's spouse regarding his routine physical examination in November 2021.[1] However, as discussed below, the Applicant does not provide relevant or probative new facts that establish eligibility for the benefit sought. *See* 8 C.F.R. § 103.5(a)(2).

1. Inadmissibility.

Beginning with the polygraph of the Applicant, the Director found that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresenting her immigrant intent when she attempted to enter the United States in June 2013. On appeal, we concluded that the record reflects that the Applicant did not retract her misrepresentation to U.S. Customs and Border Protection (CBP) until after she was confronted with documentation that contradicted her claims. On motion, the Applicant asserts that "any misleading statements were timely retracted during my initial questioning by CBP on June 25, 2013. . . . The polygraph examination submitted in support of this motion clearly establishes that I timely retracted my initial statement."

An applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act if he or she timely and voluntarily retracts the fraud or misrepresentation. *See Matter of M—*, 9 I&N Dec. 118, 119 (BIA 1960) (holding that attempted fraud must be corrected "voluntarily and prior to any exposure"); *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (holding that where an alleged retraction "was not made until it appeared that the disclosure of the falsity of the statements was imminent [, it] is evident that the recantation was neither voluntary nor timely"). For a retraction or recantation to be effective, an applicant must correct his or her representation before being exposed by the officer or U.S. government official, or before the conclusion of the proceeding during which he or she gave false testimony. 9 USCIS *Policy Manual* J.3(D)(6), https://www.uscis.gov/policymanual.

[1] The Applicant also submits on motion a one-page summary of her visit to the [redacted] Medical Center in November 2021, addressed "to whom it may concern"; however, the Applicant does not elaborate on how this document relates to any of the issues raised in the combined motion.

The polygraph report lists five relevant questions and the Applicant's responses to them:

- Regarding your attempt to enter the United States on June 25, 2013, do you intend to answer truthfully to each question about that? Reply: Yes.
- Was your purpose for any reason other than to visit . . . your boyfriend [who is now the Applicant's spouse]? Reply: No.
- Did you intend to remain permanently in the United States on June 25, 2013? Reply: No.
- Prior to June 25, 2013, were you ever employed in the United States, receiving a paycheck? Reply: No.
- Did you intentionally fail to retract your statements to the Customs and Border Patrol at the time you were interviewed? Reply: No.

The interviewer further opines, "It is the opinion of this [e]xaminer that [the Applicant] was 'truthful' in her responses and when answering the above relevant questions."

The Applicant's assertions regarding the probative value of the polygraph results are misplaced. The polygraph report does not establish that she voluntarily and timely retracted her misrepresentation to CBP. On the contrary, the record contains a transcript of the Applicant's interview in June 2013, in which she did not retract her misrepresentation before the interviewing CBP officer exposed her misrepresentation. *See Matter of M—*, 9 I&N Dec. at 119; *Matter of Namio*, 14 I&N Dec. at 414.[2] The Applicant's belief that she did not "intentionally fail to retract" her statements is not a relevant new fact regarding the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act. *See* 8 C.F.R. § 103.5(a)(2).[3] Accordingly, the Applicant has not shown proper cause for reopening the proceedings with regard to her inadmissibility.

2. Extreme Hardship.

The Director concluded that the record did not establish that denial of admission would result in extreme hardship to the Applicant's U.S. citizen spouse, the only qualifying relative. In the professional counselor's evaluation of the Applicant's spouse submitted on motion, the counselor noted his "mild depressive symptoms" and "severe anxiety." The counselor indicated she "would like future clinical assessments to rule out: Major Depressive Disorder (F33.0) and Post-Traumatic Stress Disorder (F43.10)." The counselor also "recommended that [the Applicant's spouse] began [*sic*]

[2] Specifically, the Form I-160A, Notice of Refusal of Admission/Parole into the United States, indicates that the Applicant stated in secondary inspection that she was visiting friends in the United States and that she worked for the Canadian government. The I-160A further indicates that during a search of the Applicant's belongings, a letter was found from the Applicant to her parents advising them that she was opening a restaurant as well as invoices and schedules for a restaurant. When questioned about this documentation, the Applicant stated that she had been living with her boyfriend in the United States since November 2011. The Applicant also admitted that she did not have any employment in Canada and instead assisted her boyfriend in running his restaurant. The record contains a Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, which provides the same information.

[3] The Applicant also asserts on motion that, if she were inadmissible under section 212(a)(6)(C)(i) of the Act, CBP would have stated so, rather than finding her inadmissible under 212(a)(7)(A)(i)(I) of the Act. However, the Director found the Applicant inadmissible for fraud or misrepresentation based on her encounter with CBP, in which it found the Applicant inadmissible as an intending immigrant. The Director is not precluded from finding inadmissibility for a separate ground than that found by CBP.

seeing a mental health professional as soon as possible." However, the counselor did not diagnose the Applicant's spouse with a specific psychiatric condition, nor did she prescribe any particular treatment or medication for such condition. Moreover, the record already contains similar documents reflecting the Applicant's spouse's prior periods of depression and general anxiety. Accordingly, the professional counselor's evaluation does not present a probative new fact regarding whether the Applicant's spouse would experience extreme hardship upon separation or relocation. *See* 8 C.F.R. § 103.5(a)(2); *see also 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).

Next, the nurse practitioner's letter regarding the Applicant's spouse's physical examination briefly notes that his "blood pressure remains too high," possibly "related to stress," and recommends that he increase his daily blood pressure medication. The nurse practitioner also recommends that he seeks therapy "to help with [his] stress management and anxiety" and she requests a follow-up appointment in the following month. However, the nurse practitioner's letter does not indicate that the blood pressure medication taken by the Applicant's spouse would be difficult to obtain from the Canadian healthcare system, nor does it otherwise establish how relocation would cause medical hardship to the Applicant's spouse that rises above the common results of removal. *See Matter of Pilch*, 21 I&N Dec. at 630-31. Accordingly, the nurse practitioner's letter does not present a probative new fact regarding whether the Applicant's spouse would experience extreme hardship upon separation or relocation. *See* 8 C.F.R. § 103.5(a)(2); *see also Matter of Pilch*, 21 I&N Dec. at 630-31.

The Applicant reasserts on motion to reopen, "if the [A]pplicant's spouse moved to Canada with the [A]pplicant[,] it would result in the loss of his businesses and extreme financial hardship. He would also be separated [from] his US citizen parents with whom he resides." However, these facts are not new because the record already contains statements from the Applicant's spouse that assert the same information about his business and parents. Moreover, the Applicant does not submit a new affidavit or documentary evidence regarding these assertions on motion to reopen for us to review. Therefore, these assertions on motion to reopen do not satisfy the requirements at 8 C.F.R. § 103.5(a)(2) (requiring a motion to reopen to "state new facts . . . and be supported by affidavits or other documentary evidence"). We note that, without more, severing family ties and loss of current employment are types of common results of removal. *See Matter of Pilch*, 21 I&N Dec. at 630-31.

For the reasons discussed above, we will dismiss the motion to reopen.

B. Motion to Reconsider

Turning to the motion to reconsider, the Applicant asserts that we misapplied *Matter of M—*, 9 I&N Dec. at 119, *Matter of Namio*, 14 I&N Dec. at 414, and 9 USCIS *Policy Manual, supra*, at J.3(D)(6), discussed above relating to the issue of inadmissibility.

On motion, the Applicant distinguishes *Matter of Namio* because the noncitizen in that case attempted to recant false statements one year later. The Applicant asserts that, in contrast, her fact pattern is

similar to that in *Matter of M—*, because the noncitizen in that case "recanted prior to the completion of his statement to an immigration officer when attempting entry at the International Airport in San Juan, Puerto Rico." The Applicant further asserts that her "voluntary retraction occurred during her initial interview by CBP officers. She retracted her misleading statements prior to the secondary inspection interview, as well as truthfully responding to the documentation produced by CBP at the initial stop."

The Applicant's comparison between her fact pattern and that of *Matter of M—* is misplaced. In that case, the Board specifically observed that a retraction is timely when the individual "voluntarily and prior to any exposure of the attempted fraud corrected his testimony." *Matter of M—*, 9 I&N Dec. at 119. However, the transcript of the Applicant's interview with a third CBP officer in June 2013 contains, in relevant part, the following exchange:

> Q: How long do you plan on staying in the United States?
> A: I don't know.
>
> Q: Did you have a date in mind of when you were going to leave?
> A: Maybe September. I was going to come back for my dad's birthday.
>
> Q: The only reason you were going to return to Canada in September was for a vacation?
> A: Yes, to go see family.
>
> Q: When you arrived on primary, how long did you tell the officer outside you were staying in the United States for?
> A: Three weeks.
>
> Q: When you spoke with the officer in secondary, how long did you tell him?
> A: Three weeks.
>
> Q: How come you stated to both officers three weeks?
> A: I didn't want to change.
>
> Q: What didn't you want to change?
> A: I didn't want to tell the first one three weeks then the second one different.
>
> Q: How come you did not tell the officers that you wanted to stay till September?
> A: I don't know. I was nervous.
>
> Q: What were you nervous about?
> A: My heart started pumping and I was just nervous to get across.
>
> Q: Did you figure if you said till September that you would have a problem coming into the United States?
> A: Yes, probably.

. . .

Q: In the last three years, have you come to the United States?
A: Yes.

Q: How long would you normally stay?
A: A couple weeks. The longest was maybe six months.

. . .

Q: Since November 2011, how much time have you spent in the United States?
A: About a year and a half.

The record does not support the Applicant's assertions on motion that she "retracted her misleading statements prior to the secondary inspection interview, as well as truthfully responding to the documentation produced by CBP at the initial stop." On the contrary, the record establishes that the Applicant misled one CBP officer about her intended duration of stay when questioned during the primary inspection; she similarly misled a second CBP officer in secondary inspection because she "didn't want to tell the first one three weeks then the second one different;" and a third officer confronted her about her prior misleading statements when she contradicted her prior statements in their exchange. The transcript does not reflect that the Applicant attempted to correct her prior misleading statements before the third officer questioned her about why she misled two prior CBP officers. The record does not support the assertion that the Applicant corrected her misleading statements "voluntarily and prior to any exposure of the attempted fraud." *Matter of M—*, 9 I&N Dec. at 119; *see* 9 USCIS *Policy Manual, supra,* at J.3(D)(6). The record further supports the conclusion that the Applicant was present in the United States approximately 18 months during the 20-month period of November 2011 through June 2013.

Based on our review of the record in its entirety, we find that we correctly applied the facts of record to *Matter of M—*, 9 I&N Dec. at 119, *Matter of Namio*, 14 I&N Dec. at 414, and 9 USCIS *Policy Manual, supra,* at J.3(D)(6), https://www.uscis.gov/policymanual. In summation, the Applicant has not established on motion that our 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).[4] Thus, we will dismiss the motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[4] We need not consider new evidence, such as the newly submitted polygraph report, on motion to reconsider because 8 C.F.R. § 103.5(a)(3) specifically requires that such a motion must "establish that the decision was incorrect based on the record of evidence at the time of the initial decision."