U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21182647

Date: MAY 05, 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), for fraud or willful misrepresentation.

The Director of the Santa Ana, California Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the record did not establish that the Applicant's only qualifying relative, her U.S. citizen spouse, would experience extreme hardship if the waiver is not granted. We dismissed the Applicant's appeal of that decision after reaching the same conclusion. The Applicant subsequently filed two combined motions to reopen and reconsider, which we also dismissed. The matter is now before us on a third combined motion to reopen and reconsider. On motion, the Applicant submits additional evidence in support of her claim that her spouse would experience extreme hardship and asserts that she has established her statutory eligibility for a waiver under section 212(i) of the Act.

Upon review, we will dismiss both motions.

I. LAW

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceeding at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

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 U.S. citizen or lawful permanent resident spouse or parent of the noncitizen.

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).

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 scenarios is not required if an applicant's evidence establishes that one of these scenarios would result from the denial of the waiver.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe,* 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The issues on motion are whether the Applicant: (1) has established that we incorrectly applied the law or USCIS policy in dismissing her second combined motion to reopen and reconsider, and (2) has submitted new facts demonstrating that her spouse would experience extreme hardship upon separation.

As discussed in our prior decisions, which are incorporated here by reference, the Applicant does not contest that she is inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act.

In our decision dismissing the Applicant's second motion, we determined that the motion did address the deficiencies in the record with respect to her claim that her spouse would experience extreme hardship (including emotional, medical, and financial hardship) if he were to remain in the United States, separated from her. We observed that the Applicant did not submit sufficient evidence to establish the severity of her spouse's medical and mental health conditions and that the record did not establish that her spouse receives more than conservative medication management for those conditions or that he requires the Applicant's physical assistance due to any of those conditions.[1] Further, we noted that the Applicant did not provide evidence such as treatment notes or statements from a mental health professional discussing her spouse's psychological state or any impairments. We acknowledged the Applicant's claim that her spouse would experience depression and emotional hardship upon separation from the Applicant and his stepchildren but emphasized that the record lacked any supporting evidence in support of that claim to demonstrate that such emotional difficulties would be

[1] We acknowledged the Applicant's submission of medical records indicating that her spouse suffers from hyperlipidemia, hypertension, hiatal hernia, thyroid disorder, gastro-esophageal reflux disease, lumbar radiculopathy and arthropathy.

beyond what is usual or expected in cases of family separation, and did not, for example, establish the nature of the relationship between the Applicant's spouse and her young adult children. Finally, we observed that despite the Applicant's claim that her spouse would experience financial hardship upon separation, the record contained little evidence of her spouse's financial circumstances and did not reflect that he relies upon her to pay household expenses or to provide him with other financial support.

In support of the instant combined motion to reopen and reconsider, the Applicant submits new evidence consisting of a professional opinion from a licensed marriage and family therapist, and a letter from the pastor of the church she and her family attend. For the reasons discussed below, the Applicant has not shown proper cause for reconsideration or reopening, and the combined motions will be dismissed.

A. Motion to Reconsider

Although the Applicant indicated that her Form I-290B, Notice of Appeal or Motion, is a combined motion to reconsider and motion to reopen, she does not contend that our prior decision dismissing her second motion was based on a misapplication of law or USCIS policy or claim that the decision was incorrect based on the evidence in the record of proceeding at the time of the decision, as required by 8 C.F.R. § 103.5(a)(3). Her statement on the Form I-290B is limited to a request that we reopen the matter based on her submission of new evidence, and she has not submitted a brief or other statement in support of the motion. Accordingly, the Applicant's submission does not meet the requirements of a motion to reconsider.

B. Motion to Reopen

The Applicant asserts that the newly submitted opinion from a licensed marriage and family therapist contains new facts regarding her spouse's medical condition and mental health and offers further support for her claim that he will experience extreme hardship if the waiver application is denied and they are separated.

The therapist states that they saw the Applicant's spouse six times between October and December 2021, when he sought treatment for symptoms of depression and anxiety disorder that included difficulty with sleep and concentration. The therapist indicates that the Applicant's spouse suffers from moderate depression, a panic disorder, and a persistent mood disorder, that he has been taking Xanax for 30 years, and that he is compliant with his medication. Further, the therapist states that he has a fair prognosis, and recommends that he continue with psychotherapy for six months and continue taking his prescribed medication. While we acknowledge that this new evidence corroborates the earlier assertions that the Applicant's spouse suffers from mental health conditions, it appears that he is willing and able to seek treatment as needed to manage those conditions and that he would have the means to continue such treatment if he must live separately from his spouse. The therapist's report does not specifically address whether or how separation from the Applicant would impact her spouse's psychological health or his prognosis.

While the therapist also comments on the spouse's physical health and his reliance on his spouse and stepchildren for physical support in his daily activities (such as driving him to appointments), the report does not mention that the therapist has reviewed his medical records or is in a position to reach

conclusions about the severity of any impairment or the impact of his medical conditions or his need for such support in his day-to-day life. Similarly, a letter from the pastor of the Applicant's church mentions that her spouse has "physical problems" and that he has observed the Applicant and her daughter providing assistance to him, such as supporting his walk or helping him rise from his seat. The pastor states that the Applicant's spouse "needs his wife and two daughters to continue to lead a healthy life within the limits of his medical condition." However, as noted in our prior decisions, the evidence submitted with respect to the spouse's physical health indicates that he is being treated with medications, but otherwise is lacking information from a treating physician with respect to his level of impairment, his prognosis, or his need for physical assistance in carrying out his day-to-day activities.

The Applicant's contention that her spouse would experience extreme hardship upon separation is based on a claim that the aggregated psychological, medical/physical, financial, and emotional hardships he would experience would go beyond what is usual or expected. Although the Applicant's motion contains evidence relevant to the spouse's psychological condition, the previously noted evidentiary deficiencies regarding his expected medical/physical, emotional, and financial hardships are not adequately addressed by the newly submitted evidence. The record does not establish that the Applicant's spouse relies on her for financial or physical support or that he would be unable to meet his responsibilities in her absence to such an extent that he would experience extreme hardship upon separation from her. We therefore conclude that the newly submitted evidence is insufficient to meet the requirements of a motion to reopen.

III. CONCLUSION

For the reasons discussed, the Applicant has not established that our prior decision was based on an incorrect application of law or USCIS policy and has not demonstrated proper cause for reconsideration. Further, the new evidence does not establish that the Applicant's spouse would experience extreme hardship upon separation from her and therefore does not demonstrate the Applicant's statutory eligibility for a waiver of inadmissibility under section 212(i) of the Act. Accordingly, she has not submitted new evidence that would warrant reopening the appeal. The Applicant's waiver application remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.