U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22585666

Date: NOV. 8, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant is inadmissible to the United States and 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 Nebraska Service Center denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant is inadmissible under sections 212(a)(9)(B)(i)(II) (for accruing unlawful presence in the United States), 212(a)(6)(C)(i) (for fraud or willful misrepresentation), and 212(a)(2)(A)(i)(I) (for a conviction of a crime involving moral turpitude) of the Act. The Director determined that the Applicant established extreme hardship to his U.S. citizen spouse as required under sections 212(a)(9)(B)(v), 212(i), and 212(h)(1)(B) of the Act. However, the Director concluded that the Applicant's criminal conviction was for a violent or dangerous crime, making him subject to the heightened discretionary standard at 8 C.F.R. § 212.7(d). The Director concluded that a favorable exercise of discretion was not warranted under that heightened standard, as he had not shown that the Applicant or his qualifying relatives would experience exceptional and extremely unusual hardship if the waiver application were denied. We dismissed the Applicant's subsequent appeal and motion to reconsider. The matter is now again before us on a combined motion to reopen and reconsider.

The Applicant bears the burden of proof 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). This office reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, as explained below, we will dismiss the combined 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 (1) state the reasons for reconsideration and 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 proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the applicant has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, an applicant must not only meet the formal filing requirements (such as submission of a properly completed Form I 290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. See 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The issue before us is whether the Applicant has submitted new facts to warrant reopening or has established that our decision to dismiss the prior motion to reconsider was based on an incorrect application of law or USCIS policy. We therefore incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Applicant's claims on motion.

Throughout his brief on motion, the Applicant repeatedly states that the Director erred. However, as explained above, a motion is limited to the prior decision, which is our dismissal of the Applicant's motion to reconsider, not the Director's denial of the petition. On motion, the Applicant does not allege that we erred in our prior decision, and we therefore will consider the Applicant's arguments that the Director erred only insofar as they may pertain to our prior dismissal of the Applicant's appeal. While we may not address each piece of evidence individually, we have reviewed and considered each one.

A. Motion to Reconsider

The Applicant alleges that the Director erroneously applied the law, inappropriately reviewed evidence, applied a higher and stricter standard of proof, as well as abused her discretion in not considering non-precedent decisions. The Applicant also argues that he is not inadmissible. First, the Applicant claims that his original petition contained an incorrect translation of his foreign criminal record that indicated he was convicted of aggravated robbery instead of aggravated theft. He also contends that the offense of aggravated theft is not violent and dangerous and therefore he was not subject to the heightened discretionary standard at 8 C.F.R. § 212.7(d). In addition, the Applicant states that he is not inadmissible under 212(a)(6)(C)(i) of the Act (for fraud or willful misrepresentation) because his material misrepresentation was not made for the purpose of securing entry, a visa, or an immigration benefit. However, as noted in our prior decisions, the Applicant never disputed the Director's determination that he is inadmissible under sections 212(a)(6)(C)(i) and 212(a)(2)(A)(i)(I) of the Act and that his criminal conviction is deemed to be for a violent or dangerous crime under 8 C.F.R. § 212.7(d). Our prior decisions did not disturb the Director's determination with respect to the grounds of inadmissibility, or his determination that the totality of the evidence in the record established that the Applicant's U.S. citizen spouse and child would experience extreme hardship upon separation if the waiver application was denied.

As in our prior decision, we stress again that in order to have established merit for reconsideration of our latest decision an applicant must both state the reasons why they believe the most recent decision was based on an incorrect application of law or policy; and specifically cite laws, regulations, precedent decisions, and/or binding policies that the Applicant believed we misapplied in that prior decision. Thus, in order to prevail in his motion to reconsider, the Applicant cannot merely disagree with our conclusions, but rather must demonstrate how we erred as a matter of law or policy in that immediate prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision.)

Accordingly, although we acknowledge that the Applicant submits a brief and evidence, we determine that the Applicant does not directly address the conclusions we reached in our immediate prior decision or provide reasons for reconsideration of those conclusions. Likewise, the brief in support of the current motion also lacks any cogent argument as to how we misapplied the law or USCIS policy in dismissing the prior motion to reconsider.

For the foregoing reasons, the Applicant has not shown that our prior decision contained errors of law or policy, or that the decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and it must be dismissed.

B. Motion to Reopen

Initially, we note that motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323, (1992) (citing *INS v. Abudu*, 485 U.S. 94, 108 (1988)); *see also Selimi v. Ashcroft*, 360 F.3d 736, 739 (7th Cir. 2004). There is a strong public interest in bringing proceedings to a close as promptly as is consistent with giving both parties a fair opportunity to develop and present their respective cases. *INS v. Abudu*, 485 at 107.

Based on its discretion, USCIS "has some latitude in deciding when to reopen a case" and "should have the right to be restrictive." *Id.* at 108. Granting motions too freely could permit endless delay when foreign nationals continuously produce new facts to establish eligibility, which could result in needlessly wasting time attending to filing requests. *See generally INS v. Abudu*, 485 U.S. at 108. The new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); *see also Maatougui v. Holder*, 738 F.3d 1230, 1239–40 (10th Cir. 2013). Therefore, a party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu, 485* at 110. With the current motion, the Applicant has not met that burden.

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The filing before us is not a motion to reopen the denial of the petition but instead, it is a motion to reopen our most recent decision—again, our decision dismissing his first motion. Therefore, we can consider new evidence dealing with the prior decision.

The Applicant submits a new English translation of his foreign court charges and disposition. He also submits an affidavit from an interpreter that reviewed the English interpretation submitted with the

initial petition and affirmed that the prior interpretation of the Applicant's criminal record was incorrect. However, the Applicant submits this evidence in regard to whether he is inadmissible; an issue which was not before us in our prior decision because he didn't raise it until now. It therefore has no relevance to the analysis of whether we erred in our decision dismissing the first motion.

On motion, the Applicant contends that we should reopen the decision for "fresh consideration" of hardship factors. The Applicant states that he lives in Peru and his spouse and daughter live in the United States. He also said that his spouse earns $45,000 per year and her salary does not "go far," that she requires knee replacement, and she does not have any support to help her during the recovery period of that surgery. In addition, the Applicant states that his spouse and daughter suffer mental and emotional anxiety and depression. As noted in our prior decisions, we addressed all evidence related to the family's financial, emotional, psychological, and medical hardships, including the evidence highlighted by the Applicant on motion.

On motion, the new evidence includes current financial documentation reflecting that the spouse earns an annual salary of approximately $45,690, and evidence of some of her expenses. However, this evidence does not show the extent of the family debt or whether the spouse is unable to meet her expenses or support their family financially. In addition, the Applicant asserts that his wife requires a full knee replacement that would require a long recovery period and that she cannot get their surgery if the Applicant is not present in the United States to assist her. On motion, the Applicant submits an updated letter from his spouse's doctor confirming that she requires a knee replacement. However, as noted in prior decisions, this evidence does not demonstrate the extent to which the spouse's ability to work and her daily routine have been affected or show whether her condition has been exacerbated by her separation from the Applicant. The Applicant also indicated that his spouse and daughter are suffering emotionally due to their separations. On motion, the Applicant submits an updated letter from the Center for Psychological Counseling Services, Inc. confirming the daughter completed an initial intake appointment in August 2019 for initiation of therapy services, and she attended counseling sessions until January 2021 when she showed "some improvement in level of anxiety." In addition, the letter confirmed that the daughter resumed therapy in May 2021 for bi-weekly sessions, with her most recent appointment in March 2022 to manage her "low mood and anxiety." While we do not minimize the daughter's counseling needs, the record does not show that the Applicant's daughter's situation, or the symptoms she is experiencing, are unique or atypical compared to others in similar circumstances. For example, the evidence on motion does not show that she has any physical or mental health issues that affect her ability to go to school and carry out other activities, or that she requires the Applicant's assistance to conduct her daily affairs. In addition, the letter did not address the exact nature and severity of the daughter's symptoms and describe the specific family assistance she needs, therefore we cannot ascertain the severity of those conditions or determine the degree to which the Applicant's physical presence is required to manage them. Further, the evaluator did not recommend medication or further treatment at this time.

Accordingly, the Applicant has not shown proper cause for reopening the proceedings.

III. CONCLUSION

For the reasons discussed, the Applicant's motion to reconsider has not shown that our prior decision was based on an incorrect application of law or USCIS policy, and the evidence provided in support of

the motion to reopen does not overcome the grounds underlying our prior decision. Therefore, the combined motion to reopen and reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.