U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27544982

Date: AUG. 7, 2023

Motion on Administrative Appeals Office Decision

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

The Applicant has applied to adjust status to that of a lawful permanent resident (LPR) 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 misrepresentation. The Director of the Los Angeles County Field Office denied the Applicant's Form I-601, Application for Grounds of Inadmissibility (waiver application), concluding that the Applicant had not established extreme hardship to her U.S. citizen spouse, her only qualifying relative. We dismissed a subsequent appeal. The matter is now before us on motion to reopen. 8 C.F.R. § 103.5(a)(2).

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In our previous decision, we dismissed the appeal because the Applicant failed to provide a brief within 30 days and made only a general statement regarding the Director's decision that was unsupported by precedent decisions or examples. On motion, the Applicant submits a letter from his attorney, an appeal brief, and evidence of a previous attempt to mail the appeal brief. The letter from counsel states that he attempted to submit his appeal brief in a timely manner but it was not delivered on time. The Applicant asserts that these new facts warrant reopening of the appeal and establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. We acknowledge the submission of evidence that the Applicant's attorney attempted to mail the appeal brief in a timely manner and therefore, review the newly submitted appeal brief as "new evidence" for the purpose of this motion to reopen.

The appeal brief submitted with the motion states that the Director did not consider all the evidence of extreme hardship in the aggregate. In addition, the Applicant states that her lack of ties to Japan,

the hardship to her spouse's family, and the financial, emotional, and educational hardship to her spouse constitute extreme hardship. The Applicant does not contest her inadmissibility on motion.

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 waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or LPR spouse or parent of the noncitizen. Section 212(i) of the Act. If the noncitizen demonstrates the existence of the required hardship, then they must also show that U.S. Citizenship and Immigration Services should favorably exercise its discretion and grant the waiver. *Id.* 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. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual. 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. *See id.* An 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. *See id.* Here, neither the Applicant nor her spouse have provided a statement of intent to separate or relocate abroad. Therefore, the Applicant must establish extreme hardship under both scenarios.

Contrary to the assertions of counsel in the appeal brief submitted on motion, the Director provided a detailed consideration of all the relevant hardship factors and arguments made in support of the waiver application. The Director also specifically indicated that the evidence had been reviewed in its entirety and considered in the aggregate. Regarding a lack of family ties in Japan, the Director indicated that evidence in the record establishes that the Applicant's parents still reside overseas. The Applicant did not contest this determination on appeal, undermining her assertion that she lacks social and family ties to Japan. The Applicant also asserts that she would be unable to find employment in Japan. However, she has not provided evidence of where she intends to relocate, the skills of her or her spouse, or any information regarding the Japanese job market. Moreover, she has not established that her parents, who appear to reside abroad, would be unable or unwilling to support her and her spouse as they search for employment. Similarly, the Applicant has not provided any evidence to show that her spouse would be unable to seek higher education opportunities upon relocation to Japan.

The Applicant also states that she and her spouse provide care for her spouse's elderly grandparents. However, a review of the medical documents provided with the I-601 indicates that the Applicant's Spouse's mother, who appears to reside at the same address as the Applicant and her spouse, is the primary medical contact. We acknowledge that the Applicant and her spouse may support their family members with certain health needs, however, hardship to the Applicant or to non-qualifying relatives can be considered only insofar as it results to hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

The appeal brief submitted on motion further states that the psychological assessment regarding the mental health effects of separation should be sufficient to establish extreme hardship. However, neither the Applicant nor her spouse have made an affirmative declaration that they intend to separate. In such cases, USCIS policy requires that the Applicant establish extreme hardship upon both separation and relocation abroad. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda. The psychological assessment provides a discussion of the current mental health of the Applicant's spouse and the potential consequences of separating from his spouse. The psychological assessment does not examine what effect relocating to Japan would have on the Applicant's spouse. After reviewing the evidence in its entirety and weighing the hardship that would be experienced by the Applicant's qualifying relative in the aggregate, we conclude that the Applicant has not established that her spouse's hardship upon relocation abroad would be over and above that which is normally expected from relocating to a new country. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996).

The Applicant has not met her burden of proof to establish that her spouse would experience extreme hardship in the event of relocation abroad and therefore has not established eligibility for a waiver under section 212(i) of the Act. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Since the identified basis for denial is dispositive of the Applicant's motion, we decline to reach and hereby reserve the Applicant's arguments regarding extreme hardship upon separation. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Although the Applicant has submitted additional evidence in support of the motion to reopen, the Applicant has not established eligibility for a waiver of inadmissibility under section 212(i) of the Act. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.