



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 27522254

Date: AUG. 31, 2023

Motion on Administrative Appeals Office Decision

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

The Applicant, a citizen of Jamaica, 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 and misrepresentation of material facts. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The Fort Myers, Florida Field Office Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), to waive the Applicant's inadmissibility. The Director concluded the Applicant did not establish extreme hardship to her U.S. citizen spouse, the only qualifying relative, or that discretion should be exercised in her favor, and we dismissed an appeal. The matter is before us on a motion to reopen and a motion to reconsider. The most recent AAO decision is from December 2022. On motion, the Applicant submits a brief and additional evidence advancing her eligibility claims. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will remand this case to the Director to assess new evidence of hardship.

A motion to reopen is based on new facts that are supported by documentary evidence, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). If warranted, we may grant requests that satisfy these requirements, then make a new eligibility determination.

We incorporate by reference the procedural history and the conclusions of our prior decision and the Director's original decision on the waiver application. A motion to reopen must state new facts and be supported by documentary evidence. See 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, we interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original application. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

The Applicant's motion to reopen is supported by a brief and new evidence of extreme hardship on the Applicant's U.S. citizen spouse. The new evidence includes updated statements from the

Applicant, her spouse, character letters and financial records. The Applicant's statement stresses the importance of her employment to support her husband and describes her spouse's suffering "extreme pain" from his back injury, chronic migraines, and other medical problems. The Applicant states that she is currently the only breadwinner in the house. The Applicant and her spouse moved from Florida to Georgia to cut household costs. The Applicant's spouse's updated statement corroborates the Applicant's statement. Of note, the Applicant proffered her spouse's two Forms W-2 for 2022 from his two employers that year. The Applicant's spouse earned \$20,591 at one job and \$3,3430.88 at his second job, a total of \$24,021.88. He states that his "income is extremely unstable where some weeks [he is] not earning any income at all which means [he is] very economically dependent on [his] wife."

In the March 2023 statement accompanying her motion to reopen, the Applicant states that "[s]ince 2020 until present [her husband] is unable to support house-hold expenses. He failed the required physical exam for the [commercial driver] license and was unable to work." The Applicant states that her husband regained his commercial driver license in January 2023 and is actively looking for employment, "but sometimes hits roadblocks because he becomes immobile with pain and discomfort." The Applicant's spouse asserts that his ability to work has been impaired by his physical health and flare-ups stemming from his back injury. The Applicant's husband states his "dependency on [the Applicant] is much more than just economic support but physical and emotional as well." A November 2021 psychological evaluation in the record corroborates the Applicant's husband's prior employment as a driver at the airport. The psychologist's report also states that the Applicant's husband provides some support for his mother in Jamaica and for two minor children of his who reside in Florida.

Because the record does not indicate that the Director has reviewed this additional documentation, we will return the matter to the Director to consider the new claims and evidence of extreme hardship and to determine whether the Applicant warrants a waiver in the exercise of discretion.

A motion to reconsider must state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). Because we are granting the motion to reopen, this decision need not reach a discussion of the motion to reconsider.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.