



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

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

In Re: 27489850

Date: AUG. 31. 2023

Motion on Administrative Appeals Office Decision

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

The Applicant, a native and citizen of Ethiopia currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be “admissible” or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. See *id.*

The Director of the Denver, Colorado Field Office denied the waiver application, concluding that the Applicant did not establish extreme hardship to her U.S. citizen spouse. On appeal, the Applicant disputed the Director’s finding of inadmissibility and disputed the Director’s finding that her husband would not suffer extreme hardship upon denial of the waiver application. We affirmed the Director’s decision. On motion to reopen, the Applicant presents new evidence to meet her burden of showing her husband will suffer extreme hardship if the waiver is denied.

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). We review the questions in this matter de novo. *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon review, we will grant the motion and remand the matter for further proceedings.

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).

On motion, the Applicant submits several new documents:

1. A new psychological evaluation dated February 27, 2023 for the Applicant's spouse and an accompanying resume of the psychologist. This report states that the Applicant's husband is 63 years old and relies on the Applicant for physical care and emotional support around his health issues, and that he is severely depressed with moderate anxiety, insomnia, loss of appetite and weight loss. The psychologist states that "If [the Applicant's husband] were forced to move to Ethiopia in order to be with his wife, he would suffer a severe decline in his health and risk to his life due to a loss of necessary medical care, medications, and testing."
2. A February 1, 2023 letter from the Applicant's husband's physician stating the husband's dependence on the Applicant.
3. A March 9, 2023 letter from the Applicant's husband clarifying that he intends to relocate to Ethiopia if the waiver is denied. This letter describes his dependence on the Applicant, his medical problems, his fear of being targeted in Ethiopia due to being a member of the Amhara ethnic group, and his fear of the civil unrest in Ethiopia. He states that he fled Ethiopia 30 years ago to flee political violence.
4. Evidence that the U.S. Department of State issued Temporary Protected Status (TPS) to Ethiopian nationals in the United States on December 12, 2022 due to the civil unrest there. TPS was extended through June 12, 2024.
5. A March 30, 2021 news article regarding armed men targeting ethnic Amhara for killing in several localities in Ethiopia.
6. A Brief of counsel seeking reopening based on the new documentation.

The Applicant asserts that these new facts establish eligibility for the waiver, as her husband would suffer extreme hardship if he had to relocate to Ethiopia, a country he fled 30 years ago which is currently suffering civil unrest and serious humanitarian problems, and where persons of her husband's ethnicity are being targeted on account of their Amhara ethnicity.

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> (providing guidance on the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both 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.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002)). The 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.*

We noted in our previous decision that the record did not contain a clear statement from the Applicant's spouse indicating whether he intends to remain in the United States or relocate to Ethiopia if the Applicant's waiver application is denied. On motion to reopen, the Applicant presents new evidence clarifying her husband's intention to relocate to Ethiopia if the waiver is denied. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship upon relocation.

On motion to reopen, the Applicant does not contest the finding of inadmissibility for misrepresentation of material facts, which is established in the record.

Because the record does not indicate that the Director has reviewed the 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. Upon remand, the Director may analyze the level and scale of adverse conditions the Applicant's spouse would experience in Ethiopia including economic hardship, access to medical care, violence and personal safety concerns, and aggregate all the relevant hardship factors. See 9 USCIS Policy Manual, *supra*, at B.5.

ORDER: The motion to reopen is granted and the matter is remanded to the Director for the entry of a new decision consistent with the foregoing analysis.