U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23984817

Date: MAY 19, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of India 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. *See* 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.

The Director of the Philadelphia, Pennsylvania Field Office denied the application, concluding that the Applicant had not established that his U.S. citizen spouse would suffer extreme hardship upon the Applicant's removal from the United States. The Director also concluded that, even if the Applicant had established eligibility for the waiver, he did not establish that his application merited a favorable exercise of discretion. We agreed with the Director that the Applicant had not established that his U.S. citizen spouse would suffer extreme hardship upon the Applicant's removal from the United States and dismissed the Applicant's appeal, without reaching the issue of whether the Applicant otherwise merits a waiver as a matter of discretion.[1] The Applicant now files a combined motion to reopen and reconsider our decision.

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 motions.

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 establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought.

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 United States citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act.

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 of these scenarios is not required if an applicant's evidence establishes that one of these scenarios would result from the denial of the waiver. 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. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda. Where the record is unclear as to whether the applicant's qualifying relative would remain in the United States or relocate if the applicant is refused admission, the applicant must establish that the qualifying relative would experience extreme hardship both upon separation and relocation.

II. ANALYSIS

The issue on motion is whether the Applicant has established extreme hardship to his qualifying relative, a U.S. citizen spouse, in order to establish eligibility for waiver of inadmissibility under section 212(i) of the Act.[2] In our prior decision, which we incorporate here, we found that the record established the Applicant's spouse's intention to remain in the United States without him if the

[2] The Applicant does not contest the Director's determination he is inadmissible based on fraud or willful misrepresentation of a material fact under section 212(a)(6)(C)(i) of the Act and therefore needs a waiver under section 212(i) of the Act. The record reflects that the Applicant misrepresented his identity when applying for asylum and failed to disclose this misrepresentation and a prior removal order in subsequent proceedings. In our prior decision, we withdrew the Director's finding that the Applicant was also separately inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude because we found that he fell within the "petty offense" exception to this ground of inadmissibility at section 212(a)(2)(A)(ii)(II) of the Act.

Applicant's waiver application were denied. However, we denied the waiver, concluding that the Applicant did not establish that his spouse would suffer extreme hardship upon such separation from him.

The Applicant does not assert any specific legal or factual error in our prior decision, and he therefore did not satisfy the requirements for a motion to reconsider. Instead, the Applicant asserts new facts and submits additional evidence in support of his motion to reopen. Specifically, in a supplemental statement on motion, the Applicant's spouse contends that she would now relocate with the Applicant. Consequently, the Applicant has to establish extreme hardship to his spouse in a relocation scenario only. The new evidence on motion in support of the hardship claim includes, but is not limited to: the above referenced statement from the Applicant's spouse; a biopsychosocial evaluation; older medical records relating to the Applicant, his spouse, and their son; evidence of the spouse's medical insurance in the United States; financial documents in the form of tax returns for 2018 through 2020; and information contained in 2021 reports from the U.S. Commission on International Religious Freedom (USCIRF) discussing India and the U.S. Department of State (State Department) report on country conditions.

In her statement on motion, the Applicant's spouse asserts that she would experience medical, psychological, financial, and emotional hardship upon relocation to India. With respect to her medical and psychological hardship, the Applicant's spouse states that she has suffered from depression since 2006, which got worse around 2012 when her husband declared bankruptcy and then was taken into custody by immigration officials. More recently, the spouse claims she has suffered from blackouts and upon waking has found that she injured herself. The spouse asserts that she is taking medication for depression and blood pressure, and that someone must always be with her. She contends that although her sister-in-law helps her, her youngest adult child still resides in the home she shares with her husband and is the person who is primarily responsible for making her appointments and driving her to the doctor or on other errands. She claims that she is so reliant on her youngest child that it would be an extreme hardship for her to relocate to India since their child would remain in the United States. Moreover, the Applicant's spouse says that she fears that her mental health conditions will be exacerbated if she relocates to India because all of her siblings, her husband's siblings, and all of her children and grandchildren will remain in the United States. The spouse claims that in contrast to her current situation in the United States, there would be no family to care for or monitor her in India. In addition, the spouse states that she does not have a doctor or medical insurance in India as she does in the United States, and she does not believe that she would receive adequate treatment in India.

The record on motion contains a June 2022 biopsychosocial evaluation from a therapist who reports that the Applicant's spouse states that she used to see a psychiatrist but now receives medication for depression from her general practitioner. The therapist diagnosed the Applicant's spouse with post-traumatic stress disorder (PTSD), anxiety, and depression, and recommended that she not relocate to India because, according to the therapist, she would not be able to get treatment for her mental health issues. A letter from the spouse's general practitioner, provided on motion, lists her current medications and confirms that the Applicant's spouse is currently being treated for depression, anxiety, and other health issues such as asthma and pre-diabetes. The spouse's remaining medical records include notes and records of physicians' visits showing that she has received medical treatment for different conditions in the United States since at least 2009, and that she once visited a doctor in India in 2010. The Applicant includes, on motion, medical documents relating to treatment he and their son

received in the United States, but neither the Applicant nor his spouse explain how this relates to a claim that she would experience extreme hardship upon her relocation to India.

Contrary to the Applicant's assertions on motion, the record, including his spouse's statements and medical records, does not establish that the spouse's medical and psychological conditions are life-threatening or that she is a danger to herself. Apart from general assertions from the Applicant's spouse that her conditions exist and will be exacerbated upon relocation to India, the evidence does not show the severity or frequency of her conditions or related symptoms or show how her conditions will be adversely impacted upon relocation with her spouse. According to her current physician, the Applicant's spouse takes medication for several of her conditions, and the record does not show that she would be unable to receive continued treatment upon relocation to India. In fact, the Applicant's spouse claims that she does not have a doctor in India, but a medical note from a physician in India reflect that she previously obtained treatment from a physician at on one occasion during a one-month trip to India.

We do not minimize the Applicant's spouse's claim that she would experience emotional hardship due to separation from her adult children and her grandchildren in the United States if she relocates to India. However, while she specifically claims on motion that she would suffer extreme hardship upon relocation because their youngest son currently resides with her and the Applicant and she almost exclusively relies on him to care for her every day, this is contradicted by the Applicant's statements in the motion brief which claims that the youngest son no longer lives with them and that they see him, at most, two or three days per month. Further, there is no indication in the record that the couple's family members in the United States would be unable to visit them in India. As noted in our prior decision to dismiss the appeal, the Applicant's family members in the United States asserted that the Applicant is his spouse's best option to serve as her primary source of emotional, physical, and financial support and therefore she should not be separated from him by requiring him to return to India. Consequently, if the Applicant's spouse were to relocate to India with him, as she now claims that she would do, then he could continue to provide her at least the same primary emotional and physical support that the family claimed he currently provides.

With respect to financial hardship, on motion the Applicant's spouse contends that she has physical and psychological problems that prevent her from working, and therefore the Applicant is the primary breadwinner. According to the Applicant's spouse, her husband is self-employed at a trucking business that he started after they had declared bankruptcy, and if the Applicant were removed and she relocated with him to India, they would lose their U.S. business and all of his income. The Applicant's spouse contends that her husband is too old to be considered employable in India, and she is disabled and unable to work. The Applicant includes copies of his federal income tax returns for the years 2018 through 2020; however, the tax returns show that he did not claim to have earned wages, salaries, or tips during these years, and in fact claimed unemployment compensation in 2020. Consequently, as the Applicant's evidence does not show that he is earning wages or income from his U.S. business, the record does not support his spouse's claim that she will face extreme financial hardship upon relocation because her spouse will lose his U.S. business and their family income.

As an additional matter, the Applicant asserts in his motion brief that his spouse will be subjected to extreme hardship upon relocation because she is a Sikh and because she has fully integrated into U.S. culture after living in the United States for over 25 years. He explains that they encountered difficulty

as Sikhs when they were living in India over 25 years ago but does not further elaborate on this claim. The background country conditions reports that the Applicant provides on motion do not show that he and his spouse would be mistreated because they are Sikh or that they would have difficulties reintegrating. In addition, we acknowledge that the Applicant's spouse has resided in the United States for over 25 years; however, the record reflects she is originally from India and therefore is familiar with the language and culture there and she would be returning with the Applicant, who can continue to be her primary caregiver. Considering all the evidence in the aggregate, the record is insufficient to show that the hardships faced by the Applicant's spouse upon relocation to India would exceed the common results of removal or inadmissibility. The Applicant therefore has not established that his spouse would experience extreme hardship upon relocation if the Applicant's waiver application is denied.

Accordingly, the Applicant's new evidence on his motion to reopen is not sufficient to establish that he is eligible for a waiver under section 212(i) of the Act. In addition, the Applicant does not contend and has not otherwise established that our prior decision on appeal was based on an incorrect application of law or policy and was incorrect based on the record at the time. Therefore, he also has not met the requirements for a motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.