U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21186643

Date: JUL. 28, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, who requested to adjust his status to that of a lawful permanent resident in the United States, was found inadmissible under section 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i), for prior unlawful presence of one year or more, and under section 212(a)(9)(C) of the Act for entering the United States without being admitted after having accrued unlawful presence of more than one year. The Applicant is the beneficiary of a visa petition approved pursuant to the provisions of the Violence Against Women Act (VAWA) as an abused spouse of a U.S. citizen. He seeks a waiver of inadmissibility under section 212(a)(9)(C)(iii) of the Act for entering the United States without being admitted after having accrued unlawful presence of more than one year. The Applicant does not contest his inadmissibility on motion.

The Director of the Vermont Service Center denied the application and a subsequent motion to reopen and reconsider concluding that the Applicant did not establish, as required, that his prior unlawful presence, departure, and subsequent reentry to the United States without being admitted were connected to the battery and cruelty he had experienced. We dismissed the appeal concluding, in part, that the Applicant did not demonstrate the requisite connection between the battery or extreme cruelty and his reentry into the United States. The matter is now before us on motion to reconsider. The Applicant submits a brief and asserts that he is eligible for a waiver of his inadmissibility under section 212(a)(9)(C) of the Act because his unlawful reentry to the United States was connected to the abuse he experienced.

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. Upon review, we will dismiss the motion to reconsider.

I. LAW

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).

Section 212(a)(9)(C)(i)(I) of the Act provides that any noncitizen who "has been unlawfully present in the United States for an aggregate period of more than one year . . . and who enters or attempts to reenter the United States without being admitted is inadmissible." There is an exception to this bar for noncitizens who have departed from the United States, remained abroad for at least 10 years since their last departure, and who then apply for and receive permission to reapply for admission to the United States. Section 212(a)(9)(C)(ii) of the Act. Further, pursuant to section 212(a)(9)(C)(iii) of the Act, USCIS may waive this ground of inadmissibility, as a matter of discretion, for VAWA self-petitioners who can establish a connection between the battery or subjection to extreme cruelty and their removal, departure from the United States, reentry or reentries into the United States, or attempted reentry into the United States.

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 established that our decision to dismiss the prior appeal was based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 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.

The record reflects that the Applicant is a citizen of El Salvador, who initially entered the United States without being admitted or paroled in 2002. In 2003, the Applicant returned to El Salvador with his then-girlfriend. In 2004, his girlfriend traveled to the United States. In early 2005, the Applicant returned to the United States without inspection to be with his girlfriend, and they were married by proxy later in 2005. In 2018, the couple divorced. In 2019, the Applicant's Form I-360, Petition for an Abused Spouse, as a VAWA self-petitioner was approved.

In our decision, we determined that the evidence was insufficient to establish a connection between the Applicant's departure and subsequent reentry without being admitted and the abuse that was the basis for approval of his I-360 petition. We noted that in his initial declaration, the Applicant indicated that he came back to the United States because he loved his spouse and wanted to be with her, and that the abuse started sometime after they bought a house, which according to the evidence in the record occurred in 2008. We also noted that in a statement submitted in support of his waiver request, the Applicant claimed that he returned to the United States because he felt he needed to support his spouse, but that his spouse lost interest in the relationship and began to abuse him after she was released from jail in 2006. We acknowledged the Applicant's statement that his spouse's preexisting drug use and manipulations caused him to return to the United States. However, we stated that to establish eligibility for a waiver under section 212(a)(9)(C)(iii) of the Act, he must show that there is a connection between his reentry and battery or subjection to extreme cruelty. We concluded that the

Applicant had not demonstrated that there was such a connection here, as his own statements indicated that the abuse began in either 2006 or 2008, after he had already reentered the United States without admission.

On motion, the Applicant concedes that he stated that the abuse began after his return to the United States and asserts, "[p]erhaps that was a poor choice of words." The Applicant states that "there should be no magic words here for an approval or a denial" and asks us to consider that "the manipulation which caused [the Applicant's] return to the United States is the equivalent of abuse and exploitation" and cites 8 C.F.R. § 204.2(c)(vi), which defines "battery or extreme cruelty." However, as we noted above, the record does not establish the Applicant returned to the United States due to his spouse's manipulation; instead, the record indicates that he came back because he loved his spouse and wanted to be with her. On motion, the Applicant asserts that we recognized that the spouse's preexisting drug use and manipulations caused him to return to the United States. However, in our decision, what we acknowledged was the Applicant's statement as such, not that we agree that his spouse's drug use and manipulations caused the Applicant's return.

The Applicant has not established that our previous decision was based on an incorrect application of law or USCIS policy, and that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and it must be dismissed.

ORDER: The motion to reconsider is dismissed.