U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15982617

Date: OCT. 5, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant applied to adjust status to that of a lawful permanent resident as an approved Violence Against Women Act (VAWA) self-petitioner[1] in November 2016. In January 2018, she also filed an Application for Waiver of Grounds of Inadmissibility, Form I-601, seeking a waiver of inadmissibility for unlawful physical presence in the United States under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v). *See also* Section 212(a)(9)(B)(i)(I), (iii)(IV) of the Act.

The Director of the Harlingen, Texas, Field Office denied the Applicant's Form I-601 waiver application. We dismissed her appeal, as well as her subsequent combined motions to reconsider and reopen the proceeding. We concluded in our motion decision that the Applicant was inadmissible under Section 212(a)(9)(B)(i)(I) of the Act, because she was unlawfully present in the United States for a period of more than 180 days but less than 1 year, departed the United States, then again sought admission within three years of the date of her last departure. We also determined that she did not establish the statutory exception to this ground of inadmissibility for VAWA self-petitioners under Section 212(a)(9)(B)(iii)(IV) of the Act, because she did not establish a substantial connection between her unlawful physical presence in the United States and the battery or cruelty she experienced from her U.S. citizen spouse. Finally, we found that she did not demonstrate eligibility for a waiver under Section 212(a)(9)(B)(v) of the Act, because she failed to illustrate that the denial of the Form I-601 waiver application would result in extreme hardship to her sole qualifying relative – her U.S. citizen spouse.

The matter is before us on a second motion filing. The Applicant has again filed combined motions to reconsider and reopen the proceeding. She contends as she did previously that there was a substantial connection between her unlawful physical presence and the battery or cruelty she experienced from her U.S. citizen spouse. She further contents that she should not be required to show extreme hardship to her U.S. citizen spouse under Section 212(a)(9)(B)(v) of the Act, because her

[1] The record includes a September 2016 approval notice, indicating that U.S. Citizenship and Immigration Services (USCIS) approved the Applicant's Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, with a November 13, 2015, priority date.

qualifying relative was her abuser. On motion, she provides documents relating to the hardship that she and her children would experience upon the denial of her waiver application.

Upon review, we will dismiss the Applicant's combined motions.

I. LAW

Section 212(a)(9)(B)(i)(I) of the Act provides that a noncitizen who was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States prior to the commencement of proceedings under Section 235(b)(1) or Section 240 of the Act, and again seeks admission within three years of the date of such departure or removal, is inadmissible to the United States. A noncitizen is deemed to be unlawfully present in the United States if present in the United States after the expiration of the period of authorized stay or if present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act.

The ground of inadmissibility under Section 212(a)(9)(B)(i)(I) does not apply to a noncitizen "who would be described in paragraph (6)(A)(ii) [of Section 212(a) of the Act] if 'violation of the terms of the alien's nonimmigrant visa' were substituted for 'unlawful entry into the United States' in subclause (III) of that paragraph." Section 212(a)(9)(B)(iii)(IV) of the Act. Section 212(a)(6)(A)(ii)(III) of the Act referenced in this exception provides, in relevant part that inadmissibility in Section 212(a)(6)(A)(i) of the Act does not apply to VAWA self-petitioners who can establish a substantial connection between the battery or cruelty and their "unlawful entry into the United States."

Section 212(a)(9)(B)(iii)(IV) of the Act therefore reflects that this statutory exception is available only to those VAWA self-petitioners who can demonstrate a substantial connection between the battery or extreme cruelty and the violation of the terms of their nonimmigrant visa. A noncitizen not eligible to claim this exception from inadmissibility under Section 212(a)(9)(B)(i)(I) of the Act, therefore, must seek a waiver of this ground of inadmissibility by demonstrating that denial of the waiver would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent. Section 212(a)(9)(B)(v) of the Act.

In addition, a motion to reconsider is based on an incorrect application of law or policy to the prior decision, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The record indicates that the Applicant entered the United States on August 17, 2014, with authorization to stay for 30 days, but she remained beyond her period of authorized stay. She did not depart the United States until the end of March 2015. She therefore accrued more than 180 days but less than 1 year of unlawful physical presence in the United States. After departing the United States for Mexico, where she claimed to have remained for a few days, she was admitted to the United States

on April 1, 2015. The records do not show that she has departed the country since. Approximately a month before her March 2015 departure from the United States, she met her U.S. citizen spouse.

According to her July 2017 sworn statement, which was taken during her second adjustment of status interview, she began experiencing abuse from her spouse after their marriage in [redacted] 2015. Specifically, her sworn statement reflects that when asked why she had left the United States in March 2015, she responded: "to prepare myself for what my husband wanted, [b]ecause he already wanted to get married . . . . So I said I'm going to go bring all my money." When asked had the mistreatment from her spouse begun when she departed the United States in March 2015, she answered: "No, because I came from a traditional family . . . and I told him it wasn't correct for us to live together." When specifically asked when did the mistreatment start, the Applicant replied: "Everything began when we got married after [redacted] 2015. I feel like he took the position from then that I was his."

As we discussed in our previous motion decision, in support of her first motion filing, the Applicant submitted an undated text message in Spanish without translation, an insurance policy form, mail she received from her spouse's medical care providers, and a note she identified as being from her spouse. We explained in our previous decision that none of the evidence demonstrated that her unlawful physical presence in the United States between September 2014 and March 2015, or her departure from the United States in March 2015 was connected to her spouse's abuse. Indeed, she had previously indicated that she met her spouse approximately one month before her March 2015 departure. This signifies that for most of her unlawful physical presence period she did not know her spouse. Now on motion, the Applicant claims, as she had similarly alleged on appeal and in her first motion filing, that there was a substantial connection between her March 2015 departure from the United States and her spouse's battery or cruelty.

The Applicant, however, has not established that we erred in our previous motion decision. Specifically, she has not pointed to any evidence in the record that we overlooked or that we based our decision on an incorrect application of law or policy. The Applicant does not meet the requirements of a motion to reconsider by broadly disagreeing with conclusions in our previous decision. Instead, she must demonstrate on motion how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). Here, the Applicant has not made such a showing. Accordingly, we will dismiss her motion to reconsider the matter.

Additionally, we will dismiss her motion to reopen the proceeding. As noted, the Applicant discusses the hardship that she and her children would experience if her Form I-601 waiver application were denied. We acknowledge her statements and her claimed hardship, however, under Section 212(a)(9)(B)(v) of the Act, to be eligible for a waiver of inadmissibility for unlawful physical presence in the United States, *see* Section 212(a)(9)(B)(i)(I) of the Act, she must show that the waiver denial would result in extreme hardship to her sole qualifying relative – her U.S. citizen spouse. Hardship to herself and her children, unfortunately, does not satisfy the statutory requirements.

On motion, the Applicant contents that it is "illogical and out of context" to require her to show hardship on her spouse who had abused her. While we acknowledge her argument, we must nonetheless follow the statutory and regulatory language when adjudicating the Form I-601 waiver application. As noted,

the statute specifies that a noncitizen inadmissible under Section 212(a)(9)(B)(i)(I) of the Act must seek a waiver of this ground of inadmissibility by establishing that the denial of the waiver "would result in extreme hardship to the [U.S.] citizen or lawfully resident spouse or parent of such alien." Section 212(a)(9)(B)(v) of the Act. Here, the Applicant has not made such a showing. Accordingly, we will dismiss her motion to reopen the proceeding.

III. CONCLUSION

The Applicant has not established that our previous motion decision was based on an incorrect application of law or policy, or that it was incorrect based on the evidence then before us. Therefore, she has not met the requirements for a motion to reconsider the matter. *See* 8 C.F.R. § 103.5(a)(3). In addition, the Applicant has not submitted new evidence that sufficiently establishes that her sole qualifying relative, her U.S. citizen spouse, would experience extreme hardship upon separation from her. Therefore, she has not met the requirements for a motion to reopen the proceeding. *See* 8 C.F.R. § 103.5(a)(2).

ORDER: The motion to reconsider is dismiss.

FURTHER ORDER: The motion to reopen is dismissed.