U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22436861

Date: SEP. 29, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Peru, seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), for fraud or willful misrepresentation. The Director of the Mount Laurel, New Jersey Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant did not establish the denial would result in extreme hardship to his U.S. citizen spouse, his sole qualifying relative for waiver purposes. We dismissed a subsequent appeal, concluding that the Applicant did not establish the requisite hardship to his qualifying relative. The matter is before us on a motion to reopen and motion to reconsider. In support of the motion, the Applicant submits new evidence and contends that we erred in our determination that he did not establish that his spouse would experience extreme hardship if his waiver application were denied. Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. Additionally, a review of any motion is limited to the bases supporting the prior adverse decision. 8 C.F.R. § 103.5(a)(1)(i). Thus, we examine any new facts and arguments to the extent that they pertain to our dismissal of the Applicant's prior appeal.

To be eligible for a waiver of inadmissibility under section 212(h) of the Act, an applicant must demonstrate that denial of the waiver would result in extreme hardship to his or her U.S citizen or lawfully resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act. If the record does not contain a statement from the applicant's qualifying relative specifically indicating whether he or she intends to remain in the United States or relocate with the applicant, then the applicant must establish by a preponderance of the evidence that denial of the waiver application would result in extreme hardship to the qualifying relative both upon separation and relocation. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual/volume-9-part-b-chapter-4 (providing, as guidance, the scenarios to consider in making extreme hardship determinations).

A determination of whether denial of waiver would 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). We recognize that some degree of hardship to the qualifying relative 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).

If the applicant demonstrates the existence of the requisite hardship, then they must also establish that U.S. Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver application. Section 212(h) of the Act. In these proceedings, it is the applicant's burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

In our prior decision, incorporated here by reference, we noted that the record did not indicate whether the Applicant's spouse would remain in the United States or relocate to Peru. We dismissed the Applicant's appeal because he did not establish that his qualifying relative would experience extreme hardship upon relocation to Peru or if she separated and remained in the United States.

A. Motion to Reconsider

As noted, 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 proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). In the instant motion, the Applicant contends that we erred in concluding his spouse would not experience extreme hardship upon relocating with him to Peru and that our decision misapplied the law because we relied on *Matter of Cervantes-Gonzalez,* which contains facts that are not substantially similar to the circumstances of his qualifying relative. At the outset, we note that in our decision dismissing his appeal, we did not compare the hardship in the Applicant's case to that of the hardship in *Matter of Cervantes-Gonzalez*. Instead, we cited to *Matter of Cervantes-Gonzalez* because the Act does not define extreme hardship, and the Board of Immigration Appeals, in that case, provided a list of factors as a guide in determining extreme hardship and the framework to analyze those factors.[1] *Id.* at 565-66. In our prior decision, we utilized the framework set forth therein, examined the factors pertinent to the Applicant's evidence, and determined that he had not established the requisite hardship to his spouse. As such, the Applicant's

[1] These factors include, but are not limited to the presence of lawful permanent resident or U.S. citizen family ties to this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 565-66.

arguments regarding our reliance on *Matter of Cervantes-Gonzalez* are unavailing.[2] While he disagrees with our prior hardship determination, the Applicant has not demonstrated that we erred in our previous decision based on the record then before us, or established that we misapplied relevant law or policy. As such, he has not satisfied the motion to reconsider requirements specified under 8 C.F.R. § 103.5(a)(3), and we will dismiss the instant motion to reconsider.

B. Motion to Reopen

As noted, 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, supra*, at B.4(B), https://www.uscis.gov/policymanual (discussing, as guidance, establishing hardship upon separation and relocation). In this case, the record does not contain a statement from the Applicant's spouse indicating whether she intends to remain in the United States or relocate to Peru upon the denial of his waiver application. The Applicant must therefore establish that if he were denied the wavier, his spouse would experience extreme hardship both upon separation and relocation.

In support of the motion to reopen, the Applicant submits a letter from his spouse explaining her financial and emotional conditions and her reliance on the Applicant for support; a patient letter from his spouse's doctor explaining that his spouse has a cardiac condition including cardiac arrythmia supraventricular tachycardia and a fatty liver; a letter from another of his spouse's doctors' indicating that his spouse has angina due to coronary atherosclerosis, hyperlipidemia, hypertension and asthma; and medical treatment notes indicating various medical conditions from March 2017 through March 2022. The treatment notes and letters do not show a decline in her overall health. For example, one doctor notes that the spouse has a fatty liver, which can be "associated with liver cirrhosis." However, she has not been diagnosed with cirrhosis of the liver. Her heart problems include cardiac arrythmia supraventricular tachycardia (irregularly fast or erratic heartbeat), angina (chest pain) and coronary atherosclerosis (fat build up in her arteries). The Applicant's spouse was advised by her medical providers to remain calm and maintain a healthy diet. She was also prescribed medication. Moreover, we note that hyperlipidemia, hypertension, and asthma are common treatable illnesses. Thus, his spouse's medical conditions appear to be well-managed and stable.

The record also reveals that the Applicant's spouse has been gainfully employed and financially supports herself. She works when she can, and fully utilizes the work schedule flexibilities offered by FMLA.[3] We recognize that the Applicant's spouse would be negatively affected upon separation from the Applicant. However, we cannot conclude that when considered in the aggregate, that hardship goes beyond the common results of separation from a loved one and rises to the level of extreme hardship. *See Matter of Pilch*, 21 I&N Dec. at 630-31 (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).

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[2] To the extent that the Applicant cites to *INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) for the proposition that he has established his wife would endure extreme hardship upon relocation because she has a career in the United States, we note that the Court in *Jong Ha Wang* indicated that economic hardship alone generally does not constitute extreme hardship. *Id.*

[3] Family Medical Leave Act of 1993, 29 USC § 2601-2654 (2006).

On motion, the Applicant has not established by a preponderance of the evidence that denial of his waiver application would result in extreme hardship to his spouse upon separation. *See* Section 212(h)(1)(B) of the Act; *Matter of Chawathe*, 25 I&N Dec. at 315; *see also 9 USCIS Policy Manual, supra*, at B.4(B). Based on this finding, we need not determine if the Applicant merits a waiver as a matter of discretion. Accordingly, we will dismiss the instant motion to reopen the proceeding as he has not shown eligibility for the waiver.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.