U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25715099

Date: MAY 2, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a citizen of Taiwan, applied to adjust status to that of a lawful permanent resident and was found inadmissible under section 212(a)(2)(D) of the Act for engaging in prostitution. The Applicant seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i) and section 212(h) of the Act, 8 U.S.C. § 1182(h).

The Director of the San Francisco, California Field Office denied the application, concluding that the record did not establish, as required, that denial of admission would result in extreme hardship to the Applicant's qualifying relative. We denied the Applicant's appeal of the Director's decision. The Applicant now moves for reopening and reconsideration of our September 2022 decision.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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). 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Any noncitizen who is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status, is inadmissible. Section 212(a)(2)(D)(i) of the Act.

Noncitizens found inadmissible under section 212(a)(2)(D) of the Act for engaging in prostitution may seek a discretionary waiver of inadmissibility under section 212(h) of the Act . A waiver is available if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the foreign national has been rehabilitated. Section 212(h)(1)(A) of the Act. A waiver is also available if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act. If the noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. Id.

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). 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).

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other 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 proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We cannot grant a motion that does not meet applicable requirements. See 8 C.F.R. § 103.5(a)(4).

We may, for proper cause shown, reopen the proceeding or reconsider the prior decision. 8 C.F.R. § 103.5(a)(1)(i).

II. ANALYSIS

The issue on motion to reopen and reconsider our September 2022 decision is whether the Applicant's qualifying relative would experience extreme hardship if the waiver were denied. The Applicant does not contest the finding of inadmissibility for prostitution, which is established in the record. We have considered all the evidence in the record and new evidence accompanying her motions and we conclude that it establishes that the claimed hardships rise to the level of extreme hardship when considered in the aggregate.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case her U.S. citizen spouse. 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. 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. 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/policymanual. In the present case, the Applicant's spouse asserts that she would not relocate to Taiwan with the Applicant if her waiver application is denied. The Applicant must therefore establish that if she is denied admission, her spouse would experience extreme hardship upon separation.

In support of her motion to reopen her waiver request, the Applicant updated her spouse's February 2020 medical evidence already in the record with more current November 2022 medical evidence of her spouse's degenerative disc disease and his current limitations. The Applicant's spouse's doctor has been treating the spouse for over decade for degenerative disc disease with which results in lower back pain, limited ability in lifting, prolonged sitting and standing. The spouse also continues to have an enlarged prostate with urinary retention which was not repaired by the 2019 prostate surgical procedure. The doctor noted that the Applicant's spouse will need "assistance in his activities of daily living."

The Applicant also submitted her spouse's updated and more detailed November 2022 statement describing how the Applicant physically and emotionally supports her U.S. citizen spouse in the activities of daily living. The Applicant's spouse is a senior citizen currently aged 72. He states that his wife is his primary and only caretaker and that he suffers from often intense, chronic pain due to his degenerative disc disease which the record shows will not improve over time. He explains that because he struggles from pain, he cannot perform even simple daily tasks unassisted such as getting out of bed and requires the Applicant's assistance to perform all daily tasks such as cooking, cleaning, driving, yard work, and assistance with his exercises and therapies daily. The Applicant's spouse's November 2022 statement describes more daily activities for which the spouse is dependent on the Applicant than described in his February 2020 statement. It is consistent with the degenerative nature of his disc disease that the Applicant's spouse requires more assistance in November 2022 than he required in February 2020, more than two and a half years earlier.

A previously submitted mental health report for the Applicant's spouse notes that he has been diagnosed with Major Depressive Disorder, Generalized Anxiety Disorder, Panic Disorder, and Alcohol Use Disorder-in remission. The Applicant's spouse's updated and previous statements note that he relies on the Applicant for emotional support in connection with his history of suffering from alcoholism, anxiety, and depression. The Applicant's spouse is estranged from his adult children and siblings and cannot rely on them for any caretaking responsibilities. Therefore, he has no physical and emotion support apart from the Applicant.

On motion, considering the updated evidence of the Applicant's spouse's medical limitations, the updated documented extent of his current reliance on the Applicant as a primary caretaker for his mental and physical health, and the totality of the hardship factors presented in the aggregate, we find that the Applicant's spouse would experience extreme hardship if the Applicant is not admitted to the United States. The documented hardship exceeds the common results separation due to inadmissibility. The Applicant is the sole caretaker to her elderly U.S. citizen spouse who is not expected to improve from a degenerative disease and requires daily assistance with basic tasks.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. See Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has met that burden. The Applicant has demonstrated that his spouse would experience extreme hardship. Accordingly, we will withdraw the Director's decision and return the matter for a determination of whether the Applicant warrants a favorable exercise of discretion such that her adjustment of status application may be approved.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.