U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23842753

Date: DEC. 2, 2022

Motions on Administrative Appeals Office Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant's departure from the United States would execute an *in absentia* removal order against her, rendering her inadmissible to the country for the following 10 years. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(A)(ii)(I), 8 U.S.C. § 1182(a)(9)(A)(ii)(I). She seeks advanced permission to reapply for admission so that, if she obtains an immigrant visa abroad, she could immediately return to the United States as a lawful permanent resident. *See* section 212(a)(9)(A)(iii) of the Act.

The Director of the Charlotte, North Carolina Field Office denied the application as a matter of discretion. The Director found that the Applicant did not demonstrate "reasonable cause" for missing her hearing in removal proceedings. *See* section 212(a)(6)(B) of the Act. As no waiver of this additional inadmissibility ground exists and the ground would bar her return to the country for the following five years, *id.*, the Director concluded that the application's adjudication would serve no purpose. On appeal, we summarily dismissed the Applicant's filing because it did not allege any errors in the Director's decision. *See In Re: 19327670* (AAO Jun. 14, 2022).

The matter returns to us on the Applicant's combined motions to reopen and reconsider. She bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Because the motions do not meet regulatory requirements, we must dismiss them.

I. MOTION CRITERIA

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must demonstrate that our prior decision misapplied law or U.S. Citizenship and Immigration Services (USCIS) policy based on the evidence at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant motions that meet these criteria and establish eligibility for the requested benefit. 8 C.F.R. § 103.5(a)(1), (4).

II. THE MOTION TO REOPEN

The Applicant is a 42-year-old native and citizen of El Salvador. She has a U.S. citizen spouse and three U.S. citizen children, including a 13-year-old daughter and 11-year-old son who suffer from autism. She submits additional, documentary evidence of hardship that denial of her application would cause her and her family.

The additional hardship evidence, however, does not address the ground of appellate dismissal. We dismissed the Applicant's appeal because it did not allege errors in the Director's decision. *See* 8 C.F.R. § 103.3(a)(1)(v) (requiring summary dismissal of an appeal that does not specify "any erroneous conclusion of law or statement of fact"). The hardship evidence on motion does not address the reason for the appeal's dismissal. *See* 8 C.F.R. § 103.5(a)(1) (requiring a motion to reopen to show "proper cause" for reopening "the prior decision"). As the motion does not meet applicable requirements, we must dismiss it. *See* 8 C.F.R. § 103.5(a)(4).

III. THE MOTION TO RECONSIDER

The Applicant does not allege that our appellate decision misapplied law or USCIS policy. Thus, the motion to reconsider also does not meet regulatory criteria. *See* 8 C.F.R. § 103.5(a)(3) (requiring a motion to reconsider "to establish that the [prior] decision was based on an incorrect application of law or Service policy"). We must therefore also dismiss the motion to reconsider. *See* 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.