U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23592160

Date: NOV. 25, 2022

Motions on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant applied for adjustment of status to that of a lawful permanent resident. They seek to waive a finding that they rendered themself inadmissible to the United States by willfully misrepresenting the continuity of their lawful status in the country. *See* Immigration and Nationality Act (the Act) section 212(a)(6)(C)(i), (i), 8 U.S.C. § 1182(a)(6)(C)(i), (i).

The Director of the Los Angeles, California County Field Office denied the waiver application as a matter of discretion. On appeal, we affirmed the Director's decision. We agreed that - because the Applicant did not demonstrate eligibility for adjustment based on continuous, lawful status in the United States - adjudication of their waiver application would serve no purpose.

The matter returns to us on the Applicant's combined motions to reopen and reconsider. The Applicant bears the burden of establishing eligibility for the requested waiver by a preponderance of evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we find that the Applicant's motions do not overcome the appellate dismissal ground. We will therefore dismiss the motions.

I. LAW

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 our prior decision's misapplication of law or U.S. Citizenship and Immigration Services (USCIS) policy based on the evidence at the time of the decision's issuance. 8 C.F.R. § 103.5(a)(3).

We may grant motions that meet these requirements and establish eligibility for the requested benefit. 8 C.F.R. § 103.5(a)(1) (allowing USCIS to reopen or reconsider decisions "for proper cause shown"). Conversely, we must dismiss motions that do not meet applicable criteria. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

A. The Motion to Reopen

Contrary to regulatory requirements, the Applicant's motion to reopen does not demonstrate their eligibility for the requested waiver. The only new documentary evidence comprises updated medical reports regarding the Applicant's father, a U.S. lawful permanent resident. The Applicant states that a doctor recently diagnosed their father with lung cancer. But the new medical reports do not contain the claimed diagnosis.

Even if the record demonstrated that the Applicant's father has lung cancer, the evidence would not rebut the basis of our appellate dismissal. We found that adjudication of the Applicant's waiver application lacked practical significance because they had not demonstrated eligibility to ultimately adjust their status. The medical condition of the Applicant's father might increase the amount of hardship that denial of the Applicant's waiver application would cause him. *See* section 212(i) of the Act (requiring waiver applicants to demonstrate potential, "extreme hardship" to qualifying relatives). But the Applicant has not established their eligibility to adjust status through their maintenance of F-1 nonimmigrant visa status in the United States from July 2014 to March 2015, *see* section 245(c)(2) of the Act, 8 U.S.C. § 1255(c)(2) (barring adjustment to most applicants who fail "to maintain continuously a lawful status since entry into the United States"), and thus a reason to adjudicate the waiver application.

The motion does not establish the Applicant's discretionary qualifications for the requested waiver. We will therefore dismiss the motion to reopen.

B. The Motion to Reconsider

The Applicant's motion to reconsider also does not demonstrate their eligibility for the requested waiver. Unlike the Applicant's appeal, the motion challenges the inadmissibility finding. The motion asserts the truth of the Applicant's claimed maintenance of full-time student visa status from July 2014 to March 2015 at a university whose president later pleaded guilty to admitting hundreds of F-1 students from about 2010 to 2015 without requiring them to regularly attend classes.

But the Applicant's assertions are insufficient. The Applicant argues that, if they had not maintained valid student visa status at the university, USCIS would not have allowed them to transfer their F-1 status to another school in April 2015. But, contrary to the Applicant's argument, only designated school officials can authorize noncitizen students to attend or transfer to certified schools. *See* 8 C.F.R. § 214.3(k). Thus, at the time of the Applicant's 2015 transfer, USCIS did not review whether they had maintained F-1 status at the university. Also, a copy of the Applicant's class schedule for Spring 2014 does not indicate its applicability to their university enrollment period from July 2014 to March 2015. The Applicant documented the unavailability of university records in response to their 2019 request. But they have not established the unavailability of other documentary proof of their studies, such as copies of tuition payments or textbook purchases, or statements from former professors, administrators, or classmates. Thus, the Applicant has not demonstrated their admissibility to the United States, their eligibility to adjust, or our misapplication of law or policy in finding that the waiver application's adjudication would serve no purpose.

III. CONCLUSION

Neither the motion to reopen nor the motion to reconsider demonstrate the Applicant's eligibility for the requested waiver. We will therefore affirm our dismissal of the Applicant's appeal.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.