U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24022842

Date: DEC. 19, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for committing fraud when obtaining a nonimmigrant visa. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The San Bernadino, California Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility and we dismissed an appeal and two subsequent motions. The matter is before us on a motion to reopen and a motion to reconsider. On motion, the Applicant submits a brief and additional evidence advancing their eligibility claims. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss both motions.

A motion to reopen is based on new facts that are supported by documentary evidence, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). If warranted, we may grant requests that satisfy these requirements, then make a new eligibility determination.

We incorporate by reference the procedural history and the conclusions of each decision dating back to the Director's original decision on the waiver application. A motion to reopen must state new facts and be supported by documentary evidence. *See* 8 C.F.R. 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original application. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

Ultimately, even though the Applicant has presented new facts for his motion to reopen, he did not adequately support those claims with documentary evidence, and we will dismiss this motion. For instance, the Applicant previously discussed that his spouse (N-)[1] is suffering from an adrenal

[1] We use initials to protect individuals' identities.

gland-related disease. Although he discusses her condition within this motion and how the disease has advanced, as does N- within her new statement offered on appeal, the Applicant did not offer evidence to support those claims, which is a requirement for a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2).

Also relating to N-'s medical condition, the Applicant claims she has been hospitalized after we issued the most recent motion decision. However, to support that claim he did not explain how her new hospital admissions should be factored into the extreme hardship analysis and he offers almost 600 pages of evidentiary material with this motion in support of her additional hospitalizations. However, the vast majority of those materials predate our previous motion decision, so it is unclear how those support the fact of new hospitalizations. If those materials were because they were not offered by the Applicant's previous attorney, and he mixed in any new evidence among those older materials, he did not explain how we should identify any particular form of evidence relating to his newly claimed facts.

Commensurate with the Applicant's burden to establish eligibility is the responsibility for explaining the significance of proffered evidence. *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014). Filing parties should not submit large quantities of evidence without notifying the appellate body of the specific documentation that corroborates their claims within such large quantities. Doing so places an undue burden on the appellate body to search through the documentation without the aid of the filing party's knowledge. *Toquero v. I.N.S.*, 956 F.2d 193, 196 n.4 (9th Cir. 1992).

A reviewing body is not required to sift through the record to search for errors and build the appellant's arguments before dismissing the appeal. *Id.*; *Spear Mktg., Inc. v. BancorpSouth Bank*, 791 F.3d 586, 599 (5th Cir. 2015); *see also Uli v. Mukasey*, 533 F.3d 950, 957 (8th Cir. 2008) (citing to *Matter of D-I-M-*, 24 I&N Dec. 448, 451 (BIA 2008) and noting when a case includes voluminous background materials, it is necessary to specifically identify the material one relies on to come to their conclusion). The truth is to be determined not by the quantity of evidence alone but by its quality. *Chawathe,* 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)).

Finally, the Applicant claims his spouse lost her daycare business, but he did not offer any evidence to corroborate that aspect. As a result, although the Applicant has offered new facts in this motion to reopen, he did not provide corroborating materials associated with those new facts.

He also presented other facts that were not new because he presented them either with the appeal or in a previous motion filed with our office. Those previously offered claims therefore do not meet the requirements of a motion to reopen. As an example, the Applicant's motion describes N-'s psychological hardships as detailed within her psychological evaluation. Again, the Applicant did not specify a method for us to locate any new or previous psychological evaluation within the nearly 600 pages of evidence he submits with this motion. The only evaluation we located was the same assessment from 2019 that we discussed in our decision on the appeal and in our dismissal of his first motion. Finally, the Applicant states N- will face significant financial difficulties and she cannot afford to pay rent. He presented these claims in at least his second motion filing, so they too are not new facts.

Generally, when a previous motion was dismissed because the filing party failed to meet the regulatory requirements of a motion, a subsequent motion filing must first overcome the shortcomings within the

decision that immediately preceded the current filing. And after a filing party has filed a significant number of motions, it becomes increasingly difficult to overcome each sequential preceding decision—in seriatim fashion—to eventually return to the eligibility claims they originally asserted. On motion, the Applicant does not present new facts, supported by documentary evidence. Accordingly, we will dismiss the motion to reopen.

A motion to reconsider must state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). The Board of Immigration Appeals (BIA) generally provides that a motion to reconsider asserts that at the time of the previous decision, an error was made. It questions the decision for alleged errors in appraising the facts and the law. The very nature of a motion to reconsider is that the original decision was defective in some regard. *See Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006). A motion to reconsider is based on the existing record and applicants may not introduce new facts or new evidence relative to their arguments. *Id.*

Additionally, a motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *O-S-G-*, 24 I&N Dec. at 58. Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

The Applicant's motion does not meet the applicable requirements of a motion to reconsider because he does not establish—nor does he claim—that our decision was based on an incorrect application of law or policy. *See* 8 C.F.R. § 103.5(a)(3). In particular, the Applicant does not cite to any statute, regulation, pertinent precedent decision, binding federal court decision, USCIS policy statement, or other applicable authority to establish that the original decision was defective in some regard. As he did not demonstrate that we incorrectly dismissed his appeal, the Applicant did not establish that he meets the requirements of this type of motion. Therefore, we will dismiss the motion to reconsider.

The Applicant has not demonstrated that we should either reopen the proceedings or reconsider our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.