U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16815905

Date: FEB. 17, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa and seeks a waiver of inadmissibility under sections 212(a)(9)(B)(v), 212(h), and 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(9)(B)(v), (h) and (i).

The Director of the Nebraska Service Center denied the Form I-601, concluding that while the Applicant had established rehabilitation under section 212(h)(1)(A) of the Act and extreme hardship to qualifying relatives under section 212(h)(l)(B) of the Act, the Applicant had not shown that his waiver should be granted as a matter of discretion per the higher discretionary standard for a violent or dangerous crime under 8 C.F.R. § 212.7(d). We dismissed the Applicant's subsequent appeal. The matter is again before us on a motion to reconsider.

On motion, the Applicant submits a brief. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motions to reopen and to reconsider.

I. LAW

A. Unlawful Presence

A foreign national who has been unlawfully present in the United States for 1 year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i) of the Act. A foreign national is deemed to be unlawfully present in the United States if present after the expiration of the period of authorized stay or if present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act. There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national. Section 212(a)(9)(B)(v) of the Act.

B. Fraud or Willful Misrepresentation of a Material Fact

Any foreign national who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act. There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national. Section 212(i) of the Act.

C. Multiple Criminal Convictions

Any foreign national convicted of two or more crimes (other than purely political offenses), for which the aggregate sentences amount to confinement of five years or more is inadmissible. Section 212(a)(2)(B) of the Act. Foreign nationals found inadmissible under section 212(a)(2)(B) of the Act may seek a waiver of inadmissibility under section 212(h) of the Act, which provides for a discretionary waiver where the activities occurred more than 15 years before the date of the application 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), or 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.

D. Discretion

The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez*, 21 I&N 296, 299 (BIA 1996). However, a favorable exercise of discretion is not warranted for foreign nationals who have been convicted of a violent or dangerous crime, except in extraordinary circumstances, such as cases involving national security or foreign policy considerations, or when an applicant "clearly demonstrates that the denial…would result in exceptional and extremely unusual hardship" according to 8 C.F.R. § 212.7(d).

II. ANALYSIS

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The filing before us is not a motion to reconsider the Director's denial of the petition. Instead, it is a motion to reconsider our decision dismissing the appeal. In other words, we examine any new arguments to the extent that they pertain to our prior dismissal of the Applicant's appeal. Therefore, we cannot consider new objections to the earlier denial, and the Applicant cannot use the present filing to make new allegations of error at prior stages of the proceeding.

A motion to reconsider must 1) state the reasons for reconsideration, 2) establish that the decision was based on an incorrect application of law or USCIS policy, and 3) 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 only grant motions that meet these criteria and establish eligibility for the requested benefit.

The Director determined the Applicant was inadmissible for unlawful presence, willful misrepresentation of a material fact, and multiple criminal convictions. The Director also concluded

that, although the Applicant established extreme hardship to his qualifying relatives under section 212(h)(1)(B) of the Act and rehabilitation under section 212(h)(1)(A) of the Act for his multiple criminal convictions, he did not demonstrate that the waiver should be granted as a matter of discretion under the heightened standard of exceptional and extremely unusual hardship because he had been convicted of a violent or dangerous crime.

In dismissing the appeal, we noted that the Applicant did not contest any of the grounds of inadmissibility, and only argued that the crimes for which he was convicted were not violent or dangerous under 8 C.F.R. § 212.7(d) and, thus, the heightened discretionary standard should not apply. As we explained, the Applicant must establish eligibility for a waiver for all grounds of inadmissibility. We informed the Applicant that "[t]he Director's decision d[id] not reflect that a finding was made regarding the Applicant's eligibility for a waiver under sections 212(a)(9)(B)(V) and 212(i) of the Act, which would require that the Applicant demonstrate extreme hardship to his mother, the only qualifying relative for these two waivers." [1] We further noted that the Applicant failed to assert that he had established extreme hardship to his mother. We ultimately concluded that because the Applicant had not established eligibility for a waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act, he remained inadmissible for his unlawful presence and misrepresentation of a material fact regardless of whether his convictions were for violent or dangerous crimes and, thus, declined to consider whether he merited a waiver in the exercise of discretion.

On motion, rather than explaining how we misapplied the law or policy in our decision dismissing the appeal, the Applicant incorrectly claims that the Director concluded that he did establish "extreme hardship to waive his unlawful presence and misrepresentation grounds of inadmissibility."[2] Contrary to the Applicant's assertions, however, and as discussed above, the Director's decision clearly explains that he demonstrated that he has 1) four qualifying relatives under section 212(h) of the Act for multiple convictions and 2) one qualifying relative, his mother, under sections 212(i) and 212(a)(9)(B)(v) of the Act for willful misrepresentation and unlawful presence. The Director then concluded that he established extreme hardship to his qualifying relatives under section 212(h)(1)(B) of the Act (and rehabilitation under section 212(h)(1)(A) of the Act).

Although the Applicant also argues that, in the alternative, we should have remanded the decision "to allow the service center director to make the requested findings" and "fix the original decision," he fails to cite any provision of law or USCIS policy which would have required us to do so.[3] Regardless, it is not clear what remedy would have been appropriate beyond the appellate process itself, which provided the Applicant an opportunity to supplement the record on appeal. He has again supplemented the record on motion. Therefore, it would serve no useful purpose to remand the case simply to afford the Applicant another opportunity to supplement the record.

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[1] "Courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach." *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976).

[2] The Applicant does not assert that he has established that his mother would suffer extreme hardship.

[3] As the Applicant's only argument on appeal related to whether or not any of the crimes for which he was convicted were dangerous for purposes of the heightened discretionary standard, we consider the remaining issues to have been abandoned. *See Matter of R-A-M-*. 25 I&N Dec. 657. 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226. 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham,* 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark,* No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims abandoned when not raised on appeal to AAO).

For the foregoing reasons, the motion to reconsider must be dismissed.

ORDER: The motion to reconsider is dismissed.

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