U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 17570759

Date: FEB. 23, 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).

The Director of the Columbus, Ohio Field Office denied the waiver application, concluding that the Applicant did not establish that her U.S. citizen spouse, the only qualifying relative in this case, would experience extreme hardship if her waiver application is denied. We dismissed a subsequent appeal. The matter is now before us on a combined motion to reopen and reconsider.

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. Upon review, we will dismiss the combined motion to reopen and reconsider.

## I. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by documentary evidence. 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, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original application. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

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).

## II. ANALYSIS

The issues on motion are (1) whether the Applicant has presented new facts and evidence sufficient to demonstrate that her spouse will experience extreme hardship upon denial of the waiver application; and (2) whether she has shown that our prior 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. We incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Applicant's claims on motion.

A. Motion to Reopen

The Applicant must demonstrate that denial of the waiver application would result in extreme hardship to her qualifying 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. We noted in our appeal decision that the affidavit from the Applicant's spouse describes the hardships that he would suffer upon both relocation to Nigeria and separation. Because there is no clear statement in the record about his intent to either relocate or separate, we stated that the Applicant must establish that her qualifying spouse would experience extreme hardship both upon separation and relocation if the waiver application is denied. We concluded that the Applicant had not met this requirement because she did not establish that her spouse would experience extreme hardship in the event of separation.

On motion, the Applicant submits a new affidavit from her spouse. In the affidavit, the Applicant's spouse clarifies that he plans to relocate to Nigeria with his wife if her waiver application is denied, and he reasserts that he would suffer extreme hardship upon relocation. However, the affidavit reasserts previously stated facts relating to the hardship that the Applicant's spouse would experience if the waiver application is denied. The affidavit does not constitute "new facts" for purposes of a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2). We also note that the new affidavit submitted on motion does not resolve the inconsistencies in the spouse's initial affidavit submitted with the waiver application, as detailed further below.

The Applicant asserts on motion that we committed factual error in determining that the Applicant's husband did not submit a credible statement designating his intent to relocate to Nigeria in the event the waiver application was denied. We disagree. In his initial affidavit, the Applicant's spouse indicated his intent to both relocate and separate. For example, he stated "there is no way I could allow my wife to move to Nigeria without me there;" but that "[r]egardless of the choice" to stay or relocate, he would suffer extreme emotional, financial, medical, social, and familial hardship. With regard to relocation, he stated that he would "suffer extreme hardship in Nigeria because of the poor social and political conditions;" that he would not be able to receive "his employment income and social security in Nigeria;" and that he could not "find comparable employment" in Nigeria. With regard to separation, he stated that if the waiver application is denied, "he will be forced to live without [his] wife;" and that "without [his] wife's presence in the U.S., [he] will be living in fear that something tragic will happen to her in Nigeria." He also indicated that he "will not be stable and will not be able to pay" his expenses if he remains in the United States. Thus, the initial affidavit submitted by the Applicant's spouse indicates both his intent to relocate and separate.

Further, the initial affidavit submitted by the Applicant's spouse is not credible, as it is both internally inconsistent and externally inconsistent with other relevant evidence in the record.[1] The Applicant's spouse states that he is "almost 73 years-old" and has "several health issues that require regular

[1] The Applicant must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

evaluation, treatment and prescription medication." However, he also states that he was born in 1972 and "is currently 47 years old." Further, the record does not detail that he has any health issues that require regular evaluation, treatment, and prescription medication. The Applicant's spouse also states in the initial affidavit that he is "reliant on social security income due to [his] disability,"[2] but he further asserts that he has been employed by the same company for over 20 years and has "accrued a lot of seniority with the company." The Applicant must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). She has not done so here. Thus, contrary to the Applicant's assertions, we did not commit factual error relating to the initial affidavit submitted by the Applicant's spouse.

The Applicant has not presented new facts and evidence sufficient to demonstrate that her spouse will experience extreme hardship upon denial of the waiver application. Therefore, we will dismiss the motion to reopen.

B. Motion to Reconsider.

The Applicant must demonstrate that our previous 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). As noted above, to establish eligibility for a waiver of inadmissibility, an applicant must demonstrate extreme hardship to a qualifying relative in the event of separation and relocation. Demonstrating extreme hardship under both scenarios is not required if an applicant's evidence establishes that one of these scenarios would result from the denial of the waiver. An applicant can meet this burden by submitting a statement from a qualifying relative certifying under penalty of perjury that the qualifying relative would relocate or separate if the applicant is denied admission. 9 *USCIS Policy Manual,* B.4(B) https://www.uscis.gov/policymanual.

On motion, the Applicant contends that U.S. Citizenship and Immigration Services (USCIS) failed to issue a request for evidence (RFE) as required by the *USCIS Policy Manual*, which states "[i]f the evidence presented fails to persuade the officer, the officer should provide an opportunity for the applicant to submit additional evidence – either to show that relocation or separation would occur, or to demonstrate that extreme hardship would result under both scenarios." *Id.* In the present matter, neither an RFE nor a remand are mandated by law or policy. The burden is on the applicant to establish that they are eligible for the benefit sought. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The standard of proving eligibility for a waiver is a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 375. USCIS may deny an application if the evidence the applicant submitted is not credible or otherwise does not meet the preponderance of the evidence standard to establish eligibility. Here, the initial affidavit from the Applicant's spouse describes the hardships he would suffer upon both relocation and separation, and the Applicant did not establish by a preponderance of the evidence that her spouse will experience extreme hardship both upon separation and relocation if the waiver application is denied. Failure to issue an RFE was not a violation of USCIS policy.

Citing Rule 3.14(e) of the *AAO Practice Manual*, the Applicant further states on motion that we should have remanded the matter "if the appellant has overcome the grounds of the unfavorable decision on

[2] His tax returns do not indicate that he receives social security income.

appeal, but the AAO has identified additional grounds of ineligibility during its *de novo* review." *AAO Practice Manual*, Ch. 3.14(e), https://www.uscis.gov/aao-practice-manual. Here, the Applicant did not overcome the grounds of the unfavorable decision on appeal. Thus, the Applicant's assertion is without merit.

The Applicant also asserts on motion that our decision to dismiss the appeal was in violation of USCIS policy because we required her to show extreme hardship to her spouse upon separation and relocation if the waiver application is denied.[3] We disagree. In our decision to dismiss the appeal, we explained that demonstrating extreme hardship in the event of separation and relocation is not required if evidence demonstrates that one of these scenarios would result from the denial of the waiver. However, because the Applicant's spouse claimed in his initial affidavit that both scenarios may occur (separation and relocation), we did not err in determining that the Applicant must establish extreme hardship to her spouse on relocation and separation. Our decision is supported by the *USCIS Policy Manual*, which states that an "applicant may show that extreme hardship to a qualifying relative would result from both separation and relocation." 9 *USCIS Policy Manual, supra,* at B.4(B).

A review of the evidence in the record of proceedings at the time of the decision indicates that the Applicant did not establish that her spouse would suffer extreme hardship upon relocation. In his affidavit submitted with the petition, the Applicant's spouse highlighted the poor country conditions in Nigeria, inadequate access to healthcare, inability to find employment, and loss of family structure as factors establishing his extreme hardship upon relocation.

Regarding conditions in Nigeria, the record contains a travel advisory and human rights reports for Nigeria, as well as several articles describing conditions in Nigeria. However, the Applicant did not explain where in Nigeria she and her spouse intend to live, and the country conditions documentation does not establish that someone in the spouse's situation would face financial, medical, or other difficulties or specific threats to their physical safety and security. The evidence submitted also does not show that the spouse would be unable to find employment in Nigeria. We note that although the spouse indicates that he has been employed by the same company for over 20 years, the record does not indicate his profession, and his inconsistent statement that he is reliant on social security due to a disability has not been resolved in the record.

Regarding inadequate access to healthcare, we stated in our appeal decision that the evidence concerning the health of the Applicant's spouse does not sufficiently describe the status and severity of any condition the Applicant may have, or any treatment he may need. In his initial affidavit, the Applicant's spouse states that he has several health issues requiring regular evaluation, treatment, and medication; however, his medical records indicate he has an unremarkable medical history and takes no medications. The record does not indicate any health conditions that might elevate his hardship to extreme if he were to move with the Applicant to Nigeria. We note that the Director stated that the "evidence does tend to support [the Applicant's spouse's] assertion that he may experience extreme medical hardship if he were to relocate with [the Applicant] to Nigeria." However, the Director's statement was based, in part, on an affidavit submitted by the Applicant's spouse that inaccurately states his age and medical conditions. She qualified her statement by highlighting the inconsistencies in the spouse's affidavit.

[3] The Applicant submits a copy of the relevant chapter of the *USCIS Policy Manual* on motion.

Regarding financial hardship, the record does not establish the specific financial hardship that the Applicant's spouse would face upon relocation. We noted in our appeal decision that the Applicant has not submitted documentation establishing her and her spouse's current income, expenses, assets, and liabilities, to support the assertion that her spouse would suffer financial hardship. If the spouse has to give up employment in the United States upon relocation, the evidence submitted does not show that the spouse would be unable to find employment in Nigeria. Finally, although the spouse may suffer some loss of family structure upon relocation, the Applicant did not establish her spouse would suffer hardship that was unusual or beyond that which would normally be expected upon relocation.

The totality of the evidence is insufficient to show that the hardships the Applicant's spouse may experience upon relocation, when considered in the aggregate, would exceed that which is usual or expected due to relocation and rise to the level of extreme hardship. *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).

The Applicant has not demonstrated that our prior decision was based on an incorrect application of law or policy, or that it was incorrect based on the record before us. Accordingly, we will dismiss the motion to reconsider.

## III. CONCLUSION

The Applicant has not submitted new facts and evidence sufficient to establish that her spouse would experience extreme hardship if her waiver application is denied. *See* 8 C.F.R. § 103.5(a)(2). In addition, the Applicant has not established that our previous decision was based on an incorrect application of law or policy, or that it was incorrect based on the evidence then before us. *See* 8 C.F.R. § 103.5(a)(3).

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.