U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19993208

Date: FEB. 28, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Ghana, 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).[1]

The Director of the Cleveland, Ohio Field Office denied the application, concluding that the record did not establish that the Applicant's qualifying relative, her U.S. citizen spouse, would experience extreme hardship if the waiver were 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).

[1] Any noncitizen 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, 8 U.S.C. § 1182(a)(6)(C)(i). 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 noncitizen. Section 212(i) of the Act.

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 record does not contain a statement from the Applicant's spouse indicating whether he intends to remain in the United States or relocate to Ghana if the Applicant's waiver application is denied. Therefore, 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.

In our appeal decision, we discussed the Applicant's claim that her spouse cannot afford to support himself and their children[2] on his own. The Applicant's spouse asserted that he had become unemployed because of the pandemic, and the Applicant indicated that she remained employed and was able to support them with her income. In addition, we noted that the record does not contain recent documentation establishing the Applicant and her spouse's current total income (including unemployment benefits), expenses, assets, and liabilities.

On motion, the Applicant, through counsel, contends that her spouse would suffer financial hardship if the waiver application is denied. She submits the 2019 and 2020 joint federal income tax returns for herself and her spouse; the 2019 and 2020 IRS Forms W-2, Wage and Tax Statement, for her spouse; the 2019 and 2020 Forms 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, for her spouse; a 2020 Form 1099-G, Certain Government Payments, for her spouse; and her 2020 Form 1099-NEC, Nonemployee Compensation. However, the tax documents submitted on motion do not support the Applicant's assertion that her spouse would not be able to support himself financially if the waiver application is denied. Instead, the evidence indicates that the Applicant's spouse would be able to support himself financially upon separation, as her income is not a significant factor in his overall financial security.

Specifically, the 2019 tax documents indicate that the Applicant's spouse earned $55,441 in total wages that year. The Applicant's spouse also took a taxable distribution from a qualified retirement plan totaling $8,677 in 2019. The couple's 2019 joint federal income tax return does not document wages for the

[2] The Applicant has one daughter and her spouse has two daughters. All of the children are over the age of 18.

Applicant in 2019.[3] Thus, the tax documents indicate that the Applicant's spouse had sufficient income to support himself financially that year.

Further, the 2020 tax documents submitted on motion show that the Applicant earned $11,493 in nonemployee compensation as a home health aide that year.[4] Her spouse received $23,860 in unemployment compensation; $28,818 in wages from four different employers;[5] and $61,704 in pension and annuity income in 2020.[6] Thus, the tax documents demonstrate a minimal contribution by the Applicant to the couple's total income in 2020 and indicate that the Applicant's spouse had sufficient income to support himself financially that year.

On motion, the Applicant submits her bank statements and bank statements for her spouse for the first seven months of 2021. However, these bank statements do not clearly evidence their income, expenses, assets, and liabilities and, therefore, the statements do not support the Applicant's assertion that her spouse would not be able to support himself financially upon separation. For example, the Applicant's statements show several ATM deposits, but the source of these funds is not clear from the record. Her spouse's bank statements show numerous deposits from [redacted] but it is not clear if [redacted] is his new employer. As previously noted, the Applicant's spouse indicated that he was unemployed as a result of the pandemic. Additionally, her spouse's bank statements show several money transfers (debits) via [redacted] but the reason for these transfers is unclear. Thus, we cannot discern the income, expenses, assets, and liabilities of the Applicant and her spouse based on bank statements submitted. The burden is on the Applicant to establish that she is 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. 369, 375 (AAO 2010).

On motion, the Applicant also submits evidence of the couple's charitable giving (tithes to their church) totaling $1,005 in 2019 and $1,880 in 2020. However, the record does not establish that these gifts, if continued, would prevent the Applicant's spouse from supporting himself if the Applicant's waiver application is denied. His income appears sufficient to cover his individual tithing.

Regarding hardship to the Applicant's daughter, we stated in our appeal decision that the record does not demonstrate in detail how the spouse would experience hardship in the Applicant's absence related to her daughter that is unique or atypical. On motion, the Applicant claims through counsel that her daughter's financial and emotional suffering "is his suffering." In support of this claim, the Applicant submits her daughter's 2019 federal income tax return, her daughter's IRS Form W-2, and evidence that her daughter was receiving health insurance through the prior employer of the Applicant's spouse. Because the Applicant's spouse received healthcare coverage through his former employer's health plan, the current status of his coverage is not clear. Further, the Applicant submitted her daughter's IRS Form

[3] The Applicant submits a document on motion indicating that she received $22,227 in payments from her clients through [redacted] in 2019. However, this income is not reflected on the couple's joint federal income tax return. The Applicant must resolve discrepancies 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).

[4] The Applicant's income was documented on their joint tax return in 2020.

[5] The submitted Forms W-2 show $28,818 in wages, while the tax return lists $32,029 in Form W-2 wages.

[6] The record does not indicate whether the Applicant's spouse, who reached age 60 in 2020, will continue to receive these distributions.

1098-E, Student Loan Interest Statement, reflecting that her daughter paid $705 in student loan interest in 2019. The record does not indicate that the Applicant's spouse would incur obligations related to his step-daughter's loan if the Applicant's waiver application is denied. Further, although the Applicant and her spouse claimed the Applicant's adult daughter as a dependent on their joint federal income tax returns in 2019 and 2020, the Applicant does not assert on motion how this relates to extreme financial hardship to her spouse. The submitted evidence does not specifically detail how any hardship to the Applicant's daughter as a result of the denial of the Applicant's waiver application would result in extreme hardship to her spouse. To be considered "extreme," the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996).

Concerning medical hardship, in our appeal decision, we stated that the evidence submitted does not sufficiently detail the severity of the spouse's medical conditions, the prognoses, or any required treatments. Further, we noted that the record does not indicate the spouse requires assistance to manage his conditions or show how he is unable to otherwise follow exercise and dietary recommendations. In addition, concerning the spouse's claims of depression and stress, we determined that the record does not suggest that he would be unable to seek mental health treatment in the Applicant's absence. The Applicant does not submit additional evidence on motion regarding medical hardship to her spouse. Instead, through counsel, she reasserts previously stated facts. As previously noted, a motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)).

We acknowledge that the Applicant's spouse would experience difficulties if separated from the Applicant. However, the totality of the evidence is insufficient to show by a preponderance of the evidence that these hardships, when considered in the aggregate, would exceed that which is usual or expected due to separation from a loved one and rise to the level of extreme hardship. *See Matter of Pilch*, 21 I&N Dec. at 630-31.

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

As previously stated, 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

While the Applicant generally disagrees with our appeal decision, she does not contend that our last decision was based on an incorrect application of any specific law or policy.[7] Therefore, the submission

[7] We noted in our appeal decision that the record reflects the spouse has a supportive community and family ties in the United States, and that the evidence does not indicate that these community and family members would be unable to provide the spouse support in the Applicant's absence. On motion, the Applicant asserts through counsel that we misunderstood the significance of her spouse's involvement in his community and church; however, she does not contend

does not meet the requirements of a motion to reconsider, and we will dismiss the motion. 8 C.F.R. § 103.5(a)(3).

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 and 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.

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that our last decision was based on an incorrect application of any specific law or policy. Further, she does not submit new facts and evidence on motion regarding this claim.