U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20565868

Date: FEB. 28, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for fraud or misrepresentation.

The Director of the Chicago, Illinois Field Office denied the application, concluding that the Applicant had not established that his U.S. citizen spouse would suffer extreme hardship upon his removal from the United States. We agreed with the Director and dismissed the Applicant's appeal. The Applicant has filed a motion to reconsider our decision. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion to reconsider.

I. LAW

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).

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. There is a 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.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, 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) (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). In determining whether extreme hardship exists, individual hardship factors that may not

rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). In these proceedings, it is the applicant's burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. at 376.

An applicant may show extreme hardship in two scenarios: 1) if the qualifying relatives remain in the United States separated from the applicant and 2) if the qualifying relatives relocate overseas with the applicant. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (providing, as guidance, the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. *See id.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002)). The applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. *See id.*

II. ANALYSIS

The issue on motion is whether we erred in our prior decision, which we incorporate here, in determining that the Applicant had not established that his spouse would experience extreme hardship if she remained in the United States without him.[1]

On motion, the Applicant challenges our statement that "the record does not contain a statement from the Applicant's spouse indicating whether she intends to remain in the United States or relocate to Ghana if the waiver is denied." The Applicant points to his spouse's April 2020 affidavit in which she indicated "[the Applicant] is my husband and I certify that I would relocate or separate if [the Applicant] is denied admission." Our decision stated that the Applicant's spouse did not indicate whether she intends to remain or relocate, but we acknowledge that it is misleading to state that the record did not contain this statement from the Applicant's spouse. Nonetheless, we did not err since we correctly followed the guidance outlined in 9 *USCIS Policy Manual* B.4(B) in our previous decision and considered all of the evidence in the record to determine whether his spouse would experience extreme hardship both upon separation and relocation. We ultimately concluded that the Applicant has not established extreme hardship upon separation. As the Applicant does not meet this requirement, we determined that no purpose would be served in reviewing whether he has established extreme hardship as a result of relocation. In sum, we correctly concluded the Applicant has not established that his spouse's hardships would go beyond the common results of removal and rise to the level of extreme hardship.

The Applicant also contends on motion that we did not give due consideration to the emotional hardship his spouse would endure upon separation, focusing on his spouse's "psychological assessment" which was conducted by Dr. T- over five counseling sessions in September 2019. Dr. T- indicated that his spouse's "current psychological condition meets the clinical criteria for the presence of [a]djustment [d]isorder with [d]epressive mood," and that she is "overwhelmed and considerably stressed in regard to her family immigration case." We determined in our previous decision that the Applicant's assertion on appeal that the Director disregarded his spouse's psychological assessment

[1] Our previous decision in this matter was ID# 12532329 (AAO NOV. 24, 2020).

was not correct, noting that the Director specifically addressed the assessment, indicated it did not show emotional hardship above what would be expected upon removal of a spouse, and explained that it was contradicted by other evidence in the record detailing the spouse's good health and performance at work. Therefore, we did not err based on the evidence in the record.

The Applicant emphasizes within his motion that his spouse endures heightened stress working as a licensed sterile processing technician in a medical hospital during the ongoing Covid-19 pandemic, and that her job stress impacts her emotional wellbeing. He references his spouse's affidavit in which she explained that her job duties include "ensuring that medical procedure rooms are sterile, cleaning and sterilizing dirty medical equipment, preparing equipment for use by the doctors and helping to prevent the spread of viruses and bacteria in the facility." He also highlighted the section of Dr. T-'s report which indicated that his spouse's "emotional life is characterized by intense frustrations, anger, sadness, uncertainty, hopelessness, shame, and depressed mood." However, Dr. T-'s assessment did not provide any specific examples of how the spouse's mental health issues affect her ability to maintain employment or perform daily tasks. Notably, Dr. T- recommended that his spouse "seek individual counseling" for her condition. On appeal, the Applicant also provided an article from the Mayo Clinic which explains that adjustment disorders are "stress-related conditions," and advises:

> Talk to your doctor if you continue to struggle or if you're having trouble getting through each day. You can get treatment to help you cope better with stressful events and feel better about life again.

The record is not supported by evidence that the Applicant's spouse has sought counseling for her mental health conditions. The evidence also does not suggest that his spouse would be unable to seek mental health treatment in the Applicant's absence, should she choose to do so. Moreover, without an explanation in plain language from a treating mental health practitioner of the exact nature and severity of any current condition and a description of any treatment or specific family assistance needed, we cannot ascertain the severity of the Applicant's mental health conditions, or the treatment needed. We therefore cannot determine the degree of emotional hardship separation would create. We recognize that the loss of Applicant's companionship and his parental involvement with their children would affect her overall emotional wellbeing. Nevertheless, we conclude that the evidence provided which contends that she will suffer emotional and psychological distress if she is separated from the Applicant does not sufficiently establish extreme hardship.

Considering all the evidence in its totality, the record is insufficient to show that the hardships faced by the Applicant's spouse upon separation would rise beyond the common results of removal or inadmissibility. Accordingly, we conclude that the Applicant has not established that his spouse would experience extreme hardship if his waiver application is denied. The Applicant has not established our previous decision was based on an incorrect application of law or policy, nor has he established our decision was incorrect based on the evidence in the record of proceeding. Therefore, the motion does not meet the requirements of a motion to reconsider.

ORDER: The motion to reconsider is dismissed.