



**U.S. Citizenship
and Immigration
Services**

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

In Re: 21518694

Date: JUL. 5, 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 (LPR) 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 fraud or willful misrepresentation of a material fact.

The Director of the Los Angeles, California Field Office denied the application, citing procedural grounds. The Applicant appealed the denial, and we remanded the matter because the Applicant had addressed those procedural grounds. The Director again denied the waiver application, concluding that the Applicant had not (1) provided required information on the application form; (2) submitted sufficient evidence to show extreme hardship to a qualifying relative; and (3) shown sufficient positive factors to warrant a favorable exercise of discretion. We affirmed the Director's finding that extreme hardship to a qualifying relative had not been established and dismissed the Applicant's appeal accordingly.

On motion to reopen and reconsider, the Applicant submits additional evidence and asserts that her qualifying relative will suffer extreme hardship if he remains in the United States while she relocates abroad due to her inadmissibility.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, as explained below, we will remand the matter for the entry of a new decision.

I. LAW

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 the above requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The issue on motion is whether the Applicant has shown new facts or evidence sufficient to demonstrate that she merits a waiver of inadmissibility or that our decision was based on an incorrect application of law or policy based on the evidence in the record 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.

As previously discussed, to demonstrate eligibility for a waiver of inadmissibility an applicant must demonstrate extreme hardship to a qualifying relative in the event of separation and relocation, unless the applicant can establish that only one scenario, either separation or relocation, would result from denial of admission. The 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. In our decision to dismiss the Applicant's appeal, we determined that the Applicant's spouse did not definitively state whether he intended to remain in the United States or relocate abroad if the Applicant's waiver application was denied and thus, extreme hardship in the event of relocation or separation would need to be established. We reviewed the Applicant's claims regarding hardship to her spouse and determined that she had not established extreme hardship to her spouse in the event of separation.

On motion, the Applicant's spouse, currently 68 years old, specifically states that he intends to remain in the United States were the Applicant to relocate abroad due to her inadmissibility. We will thus review the Applicant's claims regarding hardship to her spouse and determine whether extreme hardship to her spouse in the event of separation has been established.

The Applicant's spouse contends he will experience emotional, psychological, and financial hardship were he to remain in the United States while his spouse relocates abroad due to her inadmissibility. The Applicant's spouse details that he married the Applicant in 1980 and long-term separation from her after four decades together would worsen his diagnosed depression and anxiety. He states that he experiences extreme anxiety and depression when he is left alone and when in extreme stress, the Applicant's spouse maintains that he loses his sense of direction outside and gets lost on the streets.

The Applicant's spouse further explains that he has been diagnosed with numerous medical conditions, including Bell's Palsy, knee issues due to a developmental disorder in his left leg, and epilepsy, and he needs his wife to help care for him. As a result of the Bell's Palsy, the Applicant's spouse maintains that he is experiencing weakening vision and needs his wife to drive him around. The Applicant's spouse further details that in late 2021, he started experiencing epilepsy seizures and one time, he was found unconscious by his wife and she was able to provide emergency services to save him. The Applicant's spouse also states that his knee problems are becoming unbearable as he gets older and he needs to rely on a walker and his wife's assistance for mobility. Were his spouse to relocate abroad, the Applicant's spouse fears that he could have a seizure or some other health crisis and no one would be around to help him.

Regarding financial hardship, the Applicant's spouse contends that even though he receives social security payments, he and his spouse sell items at a local swap meet every weekend to help make ends meet. Without his spouse, the Applicant's spouse maintains that he would not be able to drive himself

and work the hours they do now and such a predicament would cause them financial hardship. While he acknowledges that he has two children that live in the United States, they are unable to help him due to their lack of financial resources brought about by the pandemic and the long distances between their homes.

In her own statement submitted on motion, the Applicant details the hardships her spouse will experience were she unable to reside in the United States. She notes that his health has been deteriorating; he is unable to walk to the bathroom on his own at night and he cannot take the correct medications due to his vision problems. He also is experiencing extreme pain due to his knee issues and must take painkillers to assist with pain management. As for financial hardship, the Applicant explains that twice a week, she and her spouse leave home at 4:00 in the morning to earn a living, but since her husband's significant vision loss due to Bell's Palsy, she must drive and load most of the equipment. The Applicant concludes that she has become her husband's "hands, legs, and eyes, putting my greatest effort to provide close help" to him, and she fears that if she relocates abroad, she will not be able to monitor him and his safety and well-being will be at risk. While she acknowledges that she has adult children, they are busy working and she does not want to add to their burdens, especially since her spouse needs constant supervision.

The Applicant's children echo their parents' sentiments on motion and reaffirm their contention that were their mother to relocate abroad, their father's safety and well-being would be at risk. The Applicant's lawful permanent resident son notes that his father needs assistance at night to use the bathroom and return home safely without getting lost and without his mother's daily presence and support, his father would not be able to care for himself and find meaning in his life. He also explains that due to the pandemic, he was negatively impacted financially and his wife lost her job and even visiting his parents has become a financial challenge and burden. The Applicant's U.S. citizen daughter explains that her parents have been together for 43 years and they have been pillars and shelter to each other, physically and spiritually. She also explains that due to the pandemic, it has become harder to assist them financially because the hours she worked were impacted, and it is "financially improbable for my dad [the Applicant's spouse] to lead his life and physically impossible to make extra earnings for his living."

We find that the new evidence submitted by the Applicant on motion, when considered alongside previously submitted evidence, establishes that the Applicant's spouse will experience extreme hardship if he separates from the Applicant. The record establishes that the Applicant and his spouse have been married for over 40 years. The Applicant's spouse has been diagnosed with depression and anxiety, in addition to numerous medical conditions that require monitoring and treatment. A January 2022 psychological evaluation details that the Applicant's spouse is suffering from schizophrenia, vascular dementia, anxiety, and depression, and without the Applicant's support, he cannot take care of himself because his "basic daily functioning significantly depends on her [the Applicant]." The psychologist concludes that the Applicant's spouse will experience extreme hardship if his wife has to leave the United States, including becoming "more vulnerable to hopelessness and deterioration of his psychological and physical health." A January 2022 letter from the Applicant's spouse's doctor confirms that he suffers from cerebral palsy with right leg weakness, knee osteoarthritis, and spinal stenosis with radiculopathy, and has problems with mobility. The Applicant has also submitted extensive medical documentation on motion establishing her husband's medical conditions and the medications prescribed to him since May 2019. Evidence that the Applicant's spouse has been deemed

disabled due to his medical conditions by the Department of Motor Vehicles has also been submitted on motion. The record also establishes that although the Applicant receives benefits, he needs the Applicant's presence to work and make ends meet financially. The evidence in the record is sufficient to establish that the spouse's hardships, considered individually and cumulatively, would go beyond the common results of inadmissibility or removal and rise to the level of extreme hardship due to separation from the Applicant. The Applicant has thus established extreme hardship to a qualifying relative for the purpose of a waiver for fraud or willful misrepresentation.

The Director concluded that the Applicant's negative factors outweighed the positive factors in his case. The Applicant's showing of extreme hardship to her spouse upon separation presents an additional positive factor.¹ In light of this new positive factor, we will remand the matter to the Director for a determination of whether the Applicant now merits a favorable exercise of discretion.

ORDER: The motion to reopen is granted, and the matter is remanded for the entry of a new decision consistent with the foregoing analysis

¹ Further, additional positive factors to consider with respect to the Applicant's case include hardship to the Applicant and her children, the Applicant's community ties in the United States, long-term marriage to her spouse, the presence of her two children in the United States, the Applicant's apparent lack of a criminal record, support letters on her behalf, and her statement on motion apologizing and expressing her remorse for her misrepresentation.