U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21302255

Date: JUL. 06, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Bangladesh, applied for an immigrant visa based on an approved Form I-130, Petition for Alien Relative, that her U.S. citizen son filed. She also filed an Application for Waiver of Grounds of Inadmissibility, Form I-601, seeking a waiver of inadmissibility under Section 212(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)(1). The Applicant does not contest her inadmissibility on motion.

The Director of the Nebraska Service Center denied the waiver application, concluding that the record did not establish that the Applicant had a qualifying relative for the waiver, because her U.S. citizen spouse had died. We dismissed the subsequent appeal, concluding that Section 204(l) of the Act, 8 U.S.C. § 1154(l), did not apply to her in this case. Specifically, the Applicant's U.S. citizen spouse's death cannot be treated as the functional equivalent of a finding of the requisite extreme hardship for waiver purposes when the approved I-130 petition, under which the Applicant applied for an immigrant visa, was filed by her U.S. citizen son. The matter is now before us on combined motions to reopen and reconsider. The Applicant asserts that she is eligible for a waiver and submits a brief in support.

In these proceedings, it is the Petitioner'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. LAW

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 (LPR) spouse or parent of the noncitizen. Section 212(i) of the Act.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the applicant has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, an applicant must not only meet the formal filing requirements (such as submission of a properly completed Form I 290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. See 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The issue before us is whether the Petitioner has submitted new facts to warrant reopening or has established that our decision to dismiss the prior combined motion was based on an incorrect application of law or USCIS policy. We therefore 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 Reconsider

The filing before us does not entitle the Applicant to a reconsideration of the denial of the waiver application. Rather, a motion to reconsider pertains to our most recent decision. 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 waiver denial, and the Applicant cannot use the present filing to make new allegations of error at prior stages of the proceeding.

The record reflects that the Applicant's U.S. citizen spouse filed a Form I-130 petition on her behalf in 2007, which USCIS approved in 2008. In 2017, the Applicant's U.S. citizen son also filed a Form I-130 petition on her behalf, which USCIS approved in 2019. The Applicant applied for an immigrant visa based on the approved Form I-130 petition that her son filed. In January 2020, the Applicant submitted a waiver application, seeking a waiver of inadmissibility for willful misrepresentation of a material fact. See sections 212(a)(6)(C)(i) and 212(i)(1) of the Act. She indicated on the waiver application that she was relying on her spouse as the qualifying relative to show the requisite extreme hardship. The Applicant's spouse died in February 2020, while the waiver application was pending before the Director.

On motion, the Applicant requests a reconsideration of the denial of the waiver application. She argues that the underlying Form I-130 that her U.S. citizen son filed on her behalf was adjudicated outside of normal Form I-130 processing times due to USCIS error and that as a result of that delay, she could no longer rely on her spouse as the qualifying relative. She argues that this delay then led to the denial of her waiver due to lack of a qualifying relative. Although the Applicant quotes our prior decision nearly in full, she does not point to any specific error of law or policy in that decision.

We determined that her U.S. citizen spouse's death cannot be treated as the functional equivalent of a finding of the requisite extreme hardship for waiver purposes when the approved Form I-130 petition, under which the Applicant applied for an immigrant visa, was filed by her U.S. citizen son. The Applicant does not present any arguments on motion relating to this determination, but rather seeks a reconsideration of the waiver's denial in light of the Form I-130 processing delay. She requests a substitution of her son as the qualifying relative and a consideration of extreme hardship to him. She argues that had the Form I-130 been adjudicated within normal processing times, her Form I-601 would not have been denied. She further requests that the amount of time beyond the normal Form I-130 processing times be recaptured and added back to her in the context of waiver eligibility. In essence, she argues that the waiver would not have been denied for lack of a qualifying relative because the qualifying relative would still be alive had there not been a delay in the processing of the Form I-130. The Applicant does not cite to any legal authority or precedent for such an action.

As stated in footnote two of our prior decision, "the Applicant discusses hardship that she and her son have experienced. The statutory language makes clear, however, that for a waiver of inadmissibility under Section 212(i)(1) of the Act, only hardship to "the citizen or lawfully resident spouse or parent" of the Applicant is considered." Accordingly, the law does not currently permit a consideration of hardship to a citizen or lawfully resident son or daughter. Despite this, the Applicant argues on motion that USCIS did not properly consider and assign probative value to the Applicant's evidence of hardship to herself and her son. However, as we explained above, the Applicant has not presented any legal authority under which this evidence could be considered. Moreover, as we also explained above, a motion does not entitle an applicant to a reconsideration of the waiver denial but merely reconsideration of our prior decision. We have not considered, nor will we consider, evidence of extreme hardship to the Applicant or her son. We acknowledge the Applicant's reference to the USCIS Policy Manual, which states, "[i]f the applicant meets all other statutory and regulatory requirements of the waiver, the officer must determine whether to approve the waiver as a matter of discretion." See 9 USCIS Policy Manual A.5, https://www.uscis.gov/policy-manual/volume-9-part-a-chapter-5. However, as explained, the Applicant does not meet the statutory and regulatory requirements. Therefore, no basis exists for any discretionary determination.

For the foregoing reasons, the Applicant has not shown that our prior decision contained errors of law or policy, or that the decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and it must be dismissed.

B. Motion to Reopen

The Petitioner does not present any new facts upon which to base a motion to reopen. Even if the Applicant had presented additional hardship factors to herself or to her son, such evidence would not be relevant per section 212(i)(1), as it would not be related to hardship to a citizen or lawfully resident spouse or parent. In addition, the Applicant's arguments that we should consider the effects of a USCIS processing delay on the Applicant's ability to establish eligibility for a waiver is not new. The processing delay of the Form I-130, even if relevant, occurred prior to the filing of the waiver application and therefore would not be a new circumstance or fact. Finally, the evidence provided on motion appears to be merely a resubmission of evidence already presented and found to be insufficient. Accordingly, the Applicant has not shown proper cause for reopening the proceedings.

III. CONCLUSION

Since the identified bases for dismissal are dispositive of the Applicant's motion, we decline to reach and hereby reserve the Applicant's remaining arguments. For the reasons discussed, the Applicant's motion to reconsider has not shown that our prior decision was based on an incorrect application of law or USCIS policy, and the evidence provided in support of the motion to reopen does not overcome the grounds underlying our prior decision. Therefore, the combined motion to reopen and reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.