U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21187275

Date: JUL. 8, 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), for fraud or willful misrepresentation.

The Director of the New York Field Office in New York denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, concluding that the record did not establish that the Applicant's only qualifying relative, her U.S. citizen spouse, would experience extreme hardship if the waiver is not granted. We dismissed the Applicant's appeal of that decision after reaching the same conclusion. The Applicant subsequently filed a combined motion to reopen and reconsider, which we also dismissed. The matter is now before us on a second combined motion to reopen and reconsider. On motion, the Applicant submits additional evidence in support of her claim that her spouse would experience extreme hardship and asserts that she has established her statutory eligibility for a waiver under section 212(i) of the Act. Upon review, we will dismiss the combined motion.

I. LAW

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

We note as a preliminary matter that the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The issues before us today are whether the Applicant: (1) has established that we incorrectly applied the law or USCIS policy in dismissing her combined motion to reopen and reconsider, and (2) has submitted new facts demonstrating that her spouse would experience extreme hardship upon separation.

As discussed in our prior decisions, which are incorporated here by reference, the Applicant does not contest that she is inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act.

In our decision dismissing the Applicant's motion, we determined that the motion did not address the deficiencies in the record with respect to her claim that her spouse would experience extreme hardship (including emotional, medical, and financial hardship) if he were to remain in the United States, separated from her. We observed that the Applicant did not submit sufficient evidence to establish the severity of her spouse's medical and mental health conditions and that the record did not establish that her spouse receives more than conservative medication management for those conditions or that he requires the Applicant's physical assistance due to any of those conditions. Further, we noted, that the Applicant did not provide sufficient evidence of the severity of her husband's conditions, the required treatment or family assistance needed, or how the specific symptoms affect his daily life. We acknowledged the Applicant's claim that her spouse would experience depression and emotional hardship upon separation from the Applicant but emphasized that the record lacked evidence in support of that claim to demonstrate that such emotional difficulties would be beyond what is usual or expected in cases of family separation. Finally, we observed that despite the Applicant's claim that her spouse would experience financial hardship upon separation, the record contained little evidence of her spouse's financial circumstances and did not reflect that he relies upon her to pay household expenses or to provide him with other financial support.

In support of the instant combined motion to reopen and reconsider, the Applicant submits new evidence consisting of a report from a licensed clinical social worker, and a letter from the Applicant's spouse. For the reasons discussed below, the Applicant has not shown proper cause for reconsideration or reopening, and the combined motion will be dismissed.

A. Motion to Reopen

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323, (1992) (citing *INS v. Abudu*, 485 U.S. 94, 108 (1988)); *see also Selimi v. Ashcroft*, 360 F.3d 736, 739 (7th Cir. 2004). There is a strong public interest in bringing proceedings to a close as promptly as is consistent with giving both parties a fair opportunity to develop and present their respective cases. *INS v. Abudu*, 485 at 107.

Based on its discretion, USCIS "has some latitude in deciding when to reopen a case" and "should have the right to be restrictive." *Id.* at 108. Granting motions too freely could permit endless delay when foreign nationals continuously produce new facts to establish eligibility, which could result in needlessly

wasting time attending to filing requests. *See generally INS v. Abudu*, 485 U.S. at 108. The new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); *see also Maatougui v. Holder*, 738 F.3d 1230, 1239–40 (10th Cir. 2013). Therefore, a party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu, 485* at 110. With the current motion, the Petitioner has not met that burden.

On motion, the Applicant's spouse submits a letter indicating that he and his children are suffering with the idea that the Applicant will leave the United States. The Applicant states that "being away from my wife is like telling me to go and kill myself," and he states that he needs his wife to help him care for their children. He also explains that he broke his ankle, is unemployed, and is having trouble paying rent. He also states that he is attending a counseling program that will "help me be there for my family." We are sympathetic to the emotional, and financial challenges indicated by the Applicant's spouse, but he did not explain in probative detail how the Applicant provides particular support to manage his emotional needs or provide a complete picture of his overall financial situation so as to detail the actual financial hardship he will experience if she departs.

The Applicant also submits a report from a clinical social worker who describes the report as a "forensic psychosocial psychiatric social work evaluation for immigration purposes." The report indicates that the Applicant and her family were evaluated on December 7 and 14, 2021. The report outlines the life of the Applicant, her spouse, and her children, and the hardships they suffered in their lifetime as well as the hardships that would occur if the Applicant departs the United States. The report explains that the Applicant's spouse suffers from clinical trauma, depression, recurring thoughts of suicide, panic attacks, and generalized anxiety arising from the atrocities he witnessed, and the trauma he endured, when he lived in Sierra Leone during that country's civil war, and abuse from his family, and with the uncertainty of the Applicant's immigration status.

While we do not minimize the trauma and depression experienced by the Applicant's spouse, and acknowledge that the recommended treatment is further counseling, the record does not show that the Applicant's spouse's situation, or the symptoms he is experiencing, are "extreme" as contemplated by the statute. They do not appear unique or atypical compared to what would be expected from others in similar circumstances. For example, the record does not show that he has any mental health issues that affects his ability to work or carry out other activities, or that he requires the Applicant's assistance to conduct his daily affairs. Because the social worker listed symptoms he suffers and did not address the exact nature and severity of these conditions, and describe the specific family assistance he needs, we cannot ascertain the severity of those conditions or determine the degree to which the Applicant's physical presence is required to manage them. In addition, the report indicates that the spouse is close to his four children, three of whom are adults, and there is no indication as to why his adult children would be unable or unwilling to assist him in managing his affairs in the absence of the Applicant.

The Applicant's contention that her spouse would experience extreme hardship upon separation is based on a claim that the aggregated medical, financial, and emotional hardships he would experience would rise above and beyond those that would be typically expected by others in a comparable situation. Although the Applicant's motion contains evidence relevant to the spouse's psychological condition, the previously noted evidentiary deficiencies regarding his expected medical, emotional, and financial hardships are not adequately addressed by the newly submitted evidence. The record

does not establish that the Applicant's spouse relies upon her for financial or physical support or that he would be unable to meet his responsibilities in her absence to such an extent that he would experience extreme hardship upon separation from her. We therefore conclude that the newly submitted evidence is insufficient to meet the requirements of a motion to reopen.

B. Motion to Reconsider

Although the Applicant indicated that her Form I-290B, Notice of Appeal or Motion, is a combined motion to reconsider and motion to reopen, she does not contend that our prior decision dismissing her motion was based on a misapplication of law or USCIS policy or claim that the decision was incorrect based on the evidence in the record of proceeding at the time of the decision, as required by 8 C.F.R. § 103.5(a)(3). Her statement on the Form I-290B indicates that we did not give sufficient weight to her evidence of extreme hardship, but she did not submit a brief or other statement in support of that claim. Although the Applicant's statement in support of the motion to reconsider generally alleges error in our prior decision, she does not contend that we erred as a matter of law of USCIS policy in finding, based on the evidence in the record of proceedings, that she did not establish extreme hardship to a qualifying relative as required for a waiver of inadmissibility. Accordingly, the Applicant's submission does not meet the requirements of a motion to reconsider, and it must be dismissed.

III. CONCLUSION

For the reasons discussed, the Applicant has not established that our prior decision was based on an incorrect application of law or USCIS policy and has not demonstrated proper cause for reconsideration. Further, the new evidence does not establish that the Applicant's spouse would experience extreme hardship upon separation from her and therefore does not demonstrate the Applicant's statutory eligibility for a waiver of inadmissibility under section 212(i) of the Act. Accordingly, she has not submitted new evidence that would warrant reopening the appeal. The Applicant's waiver application remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.