U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21385339

Date: JUN. 16, 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).

The Director of the Newark, New Jersey Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish extreme hardship to the Applicant's U.S. citizen spouse. We dismissed the Applicant's subsequent appeal on the same grounds and the matter is now before us on a motion to reconsider. On motion, counsel for the Applicant submits a brief and maintains that the Applicant has established his eligibility for a discretionary waiver of inadmissibility.

Upon review, we will dismiss the motion.

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). 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 established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. 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. As we noted in our decision to dismiss the appeal, the Applicant has not specified whether his spouse would relocate with him to Honduras or remain in the United States. Therefore, the Applicant must establish that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

Regarding separation, in our decision to dismiss the appeal we determined that the Applicant had not established that his spouse would experience extreme hardship were she to remain in the United States while the Applicant relocated abroad. While we acknowledged the spouse's medical and mental health conditions, we noted that the record did not establish that she was unable to care for herself without the Applicant's daily presence and support. Furthermore, while the record indicated that the Applicant was gainfully employed, the record did not establish that his spouse was unable to work to support herself; we noted that the Applicant's spouse had previously been employed full-time and none of the medical documentation provided established that she was unable to work and support herself. We thus determined that the record did not establish that the Applicant's spouse would not be able to provide for herself if she lived separately from the Applicant.

On motion, the Applicant has not sufficiently addressed or overcome the deficiencies discussed in our prior decision with respect to separation. Regarding medical and emotional hardship, the Applicant has not submitted any documentation with the instant motion from his spouse's treating physician establishing her current medical and/or mental health conditions, the treatment plan for her conditions, any limitations on her ability to work and care for herself, and the hardships she will experience, if any, were the Applicant specifically to relocate abroad; the medical and mental health documentation in the record is from 2019 and does not provide a current picture of the Applicant's spouse's conditions and/or any limitations on her daily life. Furthermore, the record indicates that the Applicant's spouse has a support network in the United States, including her mother, cousins, and aunt. The record does not establish that they would not be able to assist the Applicant's spouse. Regarding the Applicant's spouse's concerns for her husband's safety and well-being in Honduras, the record indicates that the Applicant resided in Honduras until his early 30s and no documentation has been submitted on motion establishing that his return to his native country would cause him such hardship that his spouse in the United States would experience extreme hardship.

Regarding financial hardships, the Applicant has not submitted any documentation on motion addressing the issues raised in our decision to dismiss the appeal. As detailed above, the record does not establish that the Applicant's spouse is unable to support herself and obtain health coverage during her spouse's absence.[1] Nor has the Applicant established that he would not be able to obtain employment in his native country and assist his spouse financially as needed. While we acknowledge that the Applicant's spouse may experience some emotional and financial hardship during the Applicant's absence, the Applicant has not established on motion that separation would affect his spouse's current ability to function in her daily life and meet her responsibilities to such an extent that it would cause her extreme hardship. The Applicant has thus not established on motion that his spouse would experience extreme hardship were she to remain in the United States while the Applicant relocates abroad due to his inadmissibility.

[1] In the Applicant's spouse's December 2019 statement, she detailed that she has "chosen to continue working" and "getting out of the house is the only way I can distract my mind."

The evidence in the record is insufficient 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. As the Applicant has not established on motion that his spouse would experience extreme hardship upon separation, no purpose would be served in determining whether the Applicant has established extreme hardship to his spouse upon relocation, or whether he merits a waiver as a matter of discretion.

The burden of proving eligibility for entry or admission to the United States rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not established that our decision was based on an incorrect application of law or policy. Nor has the Applicant established that our decision was incorrect based on the evidence in the record at the time of our decision. The waiver application will remain denied.

ORDER: The motion to reconsider is dismissed.