



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

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

In Re: 19890813

Date: NOV. 21, 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 application, concluding that the record did not establish that the Applicant's U.S. citizen spouse would experience extreme hardship upon his removal from the United States. We dismissed the Applicant's appeal and a subsequent motion. The matter is before us on a second motion.

In these proceedings, it is the Applicant'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 motion to reopen.

I. LAW

Any foreign national 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.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen to instances where the applicant has shown "proper cause" for that action. Thus, to merit reopening, 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

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 Applicant has submitted new facts to warrant reopening our dismissal

of his first motion. We therefore incorporate our prior decisions by reference and will repeat only certain facts and evidence as necessary to address the Applicant's claims on motion.

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 Applicant has not met that burden.

On motion, the Applicant claims that he did not commit fraud or misrepresentation because he was free to marry at the time of his marriage. In support, the Applicant presents a Certificate of No-Impediment from the Register General's Department of Jamaica. The Applicant asserts that this certificate demonstrates the non-existence of any previous marriages and therefore supports a finding that he is not inadmissible for fraud or misrepresentation. However, the circumstances concerning the Applicant's inadmissibility for fraud and misrepresentation did not arise from his ability to marry his current spouse, but rather from a misrepresentation he made on a nonimmigrant visa application regarding his marital status.¹

The Applicant argues that his prior attorney failed to timely submit this certificate in response to a request for evidence (RFE) issued on October 26, 2016. However, the record reflects that the referenced RFE relates to the Applicant's Form I-485, Application to Register Permanent Residence or to Adjust Status. The filing before us does not entitle the Applicant to a reopening of the denial of his adjustment of status application, nor does the AAO have jurisdiction over that application. Rather, the underlying benefit associated with the current motion is the Applicant's Form I-601. Even if the certificate was relevant to his waiver application or our prior dismissal of his first motion, it would not be considered new evidence.

¹ Regardless, in his appeal to the AAO, the Applicant did not contest the determination that he is inadmissible for fraud or misrepresentation. As such, any claims that he did not commit fraud or misrepresentation have been waived. When dismissing an appeal, the AAO does not address issues that were not raised with specificity on appeal. Issues or claims that are not raised on appeal are deemed to be "waived." See, e.g., *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). The courts' view of issue waiver varies from circuit to circuit. See *Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (finding that issues not raised in a brief are deemed waived); *Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996) (finding that an issue referred to in an affected party's statement of the case but not discussed in the body of the brief is deemed waived); but see *Hoxha v. Holder*, 559 F.3d 157, 163 (3d Cir. 2009) (issue raised in notice of appeal form is not waived, despite failure to address in the brief).

III. Conclusion

The Applicant does not present any new facts or evidence upon which to base a motion to reopen. Accordingly, the Applicant has not shown proper cause for reopening the proceedings. The evidence provided in support of the motion to reopen does not overcome the grounds underlying our prior decision. Therefore, the motion to reopen is dismissed.

ORDER: The motion to reopen is dismissed.