U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23752718

Date: NOV. 23, 2022

Motion on Administrative Appeal 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) 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 and misrepresentation of a material fact. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Queens Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility. The Director concluded the Applicant did not establish extreme hardship. The Director further determined that adjudicating the waiver would not resolve all the Applicant's admissibility issues as he would remain subject to section 212(a)(9)(C)(i) of the Act as one who entered the United States without being admitted after being ordered removed and being removed from the United States.

We dismissed an appeal agreeing with the Director, and we dismissed a subsequent motion to reopen because it was not timely filed despite a 60 day extension the agency implemented due to the COVID-19 pandemic. The Applicant now files a new motion to reopen. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). According to the Instructions for Notice of Appeal or Motion (Form I-290B, Notice of Appeal or Motion), any new facts and documentary evidence must demonstrate eligibility for the required immigration benefit at the time the application or petition was filed. A motion to reopen that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original application. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

A motion to reopen must state new facts and be supported by documentary evidence. *See* 8 C.F.R. 103.5(a)(2). The Applicant included a statement on the motion form indicating we should reopen his case because the COVID-19 pandemic was an unusual circumstance and missing a filing deadline should be forgiven. The Applicant also provided a separate statement in which he indicated that before the due date for the previous motion to reopen, he contracted COVID-19 and was forced to quarantine in accordance with New York State COVID policies. The Applicant claims he made diligent efforts to mail the package believing we would receive it on time, but he does not describe what those diligent efforts consisted of.

The Applicant offers new facts (that he contracted COVID-19) but he has not supported those new facts with documentary evidence. For instance, he did not present evidence show that he contracted COVID-19, nor the New York State policy reflecting he was forced to quarantine, nor did he offer an explanation of how quarantining would prevent him from having someone else mail his first motion to reopen to this agency within the extended time frame of 93 days.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) contains a provision to excuse an untimely motion to reopen filing "in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." The Applicant has not established he was in a condition rendering him unable to correspond with an immigration attorney to timely file the first motion to reopen within 93 days of our decision dismissing the appeal. We observe that he was represented by counsel when he filed the waiver application, by separate counsel when he filed the appeal, and he is currently represented by the same attorney he relied upon for the waiver application. As a result, he has not demonstrated the delay in filing his first motion to reopen was reasonable and beyond his control and we will not exercise our discretion to excuse the Applicant's untimely filed motion.

Alternatively, even if we did excuse the Applicant's late filing on his first motion to reopen, within that filing he failed to adequately address our determination in the appeal decision that approving the waiver application to waive his inadmissibility under section 212(a)(6)(C)(i) of the Act would serve no purpose. We made that finding because he would remain inadmissible under section 212(a)(9)(C)(i)(II) of the Act and the Director made this same finding. To date, the Applicant has not attempted to demonstrate he qualifies for the waiver of section 212(a)(9)(C)(i)(II) that is found under section 212(a)(9)(C)(iii) of the Act.

To summarize, the Applicant's first motion to reopen was not sufficient to overcome our decision on the appeal because it did not address his additional inadmissibility ground, and within this motion filing he has not demonstrated that the untimely nature of his first motion filing was reasonable and beyond his control. Furthermore, within this motion the Applicant does not present new facts that are also supported by documentary evidence. Based on these collective factors, we will dismiss the motion to reopen.

ORDER: The motion to reopen is dismissed.