U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27611567

Date: AUG. 25, 2023

Motion on Administrative Appeal Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, who has requested to adjust his status to that of a lawful permanent resident, 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 misrepresentation. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission will cause extreme hardship to a noncitizen's U.S. citizen or lawful permanent spouse or parent. *Id.*

The Director of the Long Island Field Office in Holtsville, New York denied the application, concluding that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation[1] and did not establish, as required, that his lawful permanent resident spouse will experience extreme hardship if the waiver is not granted. We dismissed the Applicant's appeal on the same grounds. The matter is now before us on a combined motion to reopen and reconsider.

The Applicant submits additional documentation and asserts that our adverse determination concerning extreme hardship[2] was based on an incorrect application of law and against the weight of the evidence in the record at the time we dismissed his appeal.

Upon de novo review, we will dismiss the motion to reopen and the motion to reconsider.

I. LAW

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider must establish that our decision was based on an incorrect application of law or USCIS policy to the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(2)-(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

As previously discussed, a determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case and, although some degree of hardship

[1] The record reflects that the Applicant misrepresented, in part, his marital and familial status when he previously sought to adjust his status in the United States based on a marriage to a U.S. citizen.

[2] The Applicant does not contest the inadmissibility finding.

to qualifying relatives is present in most cases, to be considered "extreme" the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were the "common results of deportation" and did not alone constitute extreme hardship).

Once the requisite extreme hardship is established, the applicant must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

The Applicant bears the burden of proof to demonstrate by a preponderance of the evidence that he meets the above requirements. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

II. ANALYSIS

In our previous decision, which we incorporate here by reference, we evaluated evidence in support of the claimed medical, emotional, and financial hardships to the Applicant's spouse, who is his only qualifying relative for the purposes of a waiver under section 212(i) of the Act. We determined that this evidence, which consisted of the Applicant's and his spouse's statements; their medical, tax and employment records; and documents related to the operation of their liquor store was not sufficient to establish that the spouse's hardships considered individually and in the aggregate would go beyond the common consequences of family separation. Specifically, while the Applicant's spouse had been diagnosed with multiple health issues, she continues to work at the family store and the Applicant, who himself suffers from various medical conditions, did not explain the extent to which she needed his assistance, whether other arrangements could be made for any care she may require, or if other family members could assist his spouse in his absence. With regard to the claimed financial hardship, we recognized the spouse's statements that she would not be able to manage the store without the Applicant's help due to her health issues and limited English language ability. We noted, however, that the Applicant did not show that his adult son, who also works at the store and lives with the Applicant and his spouse, would not be able to take over the business or hire a store manager. We further noted that because the Applicant and his spouse had substantial assets, including their home and business, and their two adult children resided in the United States, the economic impact of the Applicant's departure from the United States on his spouse would likely not rise to the level of extreme. We also acknowledged the submission of country reports for India as pertinent to the Applicant's hardship upon relocation. However, as the Applicant's did not explain how this evidence supported the claimed hardship to his spouse, who had stated that she would not relocate to India, we found it irrelevant in the context of separation. Lastly, we pointed out that according to USCIS records the Applicant's spouse traveled to Canada on multiple occasions, and the Applicant did not show she could not visit him in India if he were to return there. Thus, we concluded that although the circumstances in the Applicant's case were sympathetic, given his and his spouse's ages and medical conditions, the preponderance of the evidence was not sufficient to establish the requisite extreme hardship to the Applicant's spouse upon separation.

A. Motion To Reopen

The Applicant now submits letters from his spouse, son, and daughter, as well as supplemental medical documentation concerning his and his spouse's medical conditions. He also provides their home

mortgage account information, 2021 individual and business tax returns, and reports about healthcare and human rights violations in India. We have reviewed this additional evidence, but conclude that it does not establish any new facts sufficient to warrant reopening of the instant proceedings.

In his updated affidavit, the Applicant states that even though it may seem like other family members will be able to take care of his spouse and tend to her healthcare needs, he is the one who does most of the caretaking in ways that no one else can, which includes driving her to her medical appointments, helping her with daily activities, and translating for her at the hospital. He further states that he and his spouse take care of each other, and although his spouse's diabetes is uncontrolled and there is nothing he can do to make it better, he can nevertheless provide the care she needs to the best of his ability. The Applicant's spouse reiterates that she suffers from diabetes and hypertension, and that sometimes she can't even use a restroom and only trusts the Applicant for help in such intimate matters. She states that the Applicant's immigration case has caused her immense stress, "and stress is known to negatively impact and highly contribute to hypertension and diabetes." The spouse explains that she relies on the Applicant to drive her to her medical appointments because she cannot drive or perform simple life-sustaining tasks.[3] She states that although her son and daughter-in-law live with them, their have their own family to take care of and would not be able to attend to her needs in the Applicant's absence. She further states that she would not be able to visit the Applicant in India frequently because of the substantial distance and cost of travel. Lastly, she states that the Applicant's removal from the United States will cause her financial hardship, because her son is transitioning to a real estate business, and it will be difficult for her to find someone she trusts to help her operate the store. The Applicant's son confirms that he is currently pursuing a career in real estate and is debating whether he should move to New York. He states that for this reason he is helping his parents less at the store; his mother may end up losing the business if neither he nor the Applicant are there to assist her, and she will not be able to afford mortgage payments on the house. He explains that both his parents provide daycare for his children and that it will be hard for him to pay for such services if his father is not in the United States. The Applicant's daughter, in turn, states that she currently resides in California, and the Applicant's removal from the United States will emotionally and physically destroy her mother, who suffers from debilitating medical conditions, is incapable of working, and will become a burden to those around her.

We have considered the above statements and supplemental evidence. However, the Applicant still does not explain how he assists his spouse aside from driving her to her medical appointments and helping her run the business. His general statement that he is the one who tends to her healthcare needs and does most of the caretaking in ways that no one else can does not overcome our previous determination that he has not established if and how his spouse's medical conditions affect her daily life and the extent to which she relies on his assistance. The spouse's updated medical records do not indicate that she has any new health-related problems, or that her existing medical conditions have worsened to a degree that may elevate her hardship to extreme. Nor do those records indicate that the spouse's health issues limit her ability to work or live independently, or that she requires assistance in taking care of herself. Moreover, the spouse's and her son's own statements indicate that she continues to work at the store, and that she and the Applicant jointly take care of their grandchildren; there is nothing in the record to support the daughter's statement that her mother is not able to work because

[3] The spouse does not explain what those tasks are.

of her health issues. Consequently, the record still does not support a finding that the hardship related to the spouse's medical conditions will rise to the level of extreme if the Applicant is denied admission.

Regarding the financial hardship, we acknowledge the submission of supplemental tax and mortgage documents, as well as the statement from the Applicant's son that he intends to transition to a career in real estate and will not be able to help his mother run the family business. But as previously discussed, the Applicant and his spouse appear to have assets and family ties in the United States that are likely to diminish the spouse's financial hardship if she remains in the United States without the Applicant. Furthermore, the record remains inadequate to show specifically what impact the loss of the Applicant's income will have on his spouse, as it does not include evidence of their monthly income and household expenses, including information about the financial contributions of their son and daughter-in-law, who are part of that household. The spouse's mere assertion that it will be difficult for her to find someone she trusts to run the family business does not establish that she and the Applicant have considered alternative means of securing financial support for her in his absence, that making other business and financial arrangements would not be practical or possible, and that as a result the economic detriment to the Applicant's spouse would be extreme.

We recognize the spouse's statement that because of her medical issues and diminished financial resources, she may not be able to visit the Applicant in India as frequently as she may wish. However, as previously discussed, the spouse has traveled to Canada in the past on multiple occasions and, while we recognize that a trip to Canada is not as costly or physically demanding as travel to India, USCIS records indicate that the spouse did recently travel to India for a two-month period. Consequently, we cannot conclude that the spouse's health issues and conditions in India are such that they will prevent her from travelling there to visit the Applicant, and that this is likely to cause her extreme physical, emotional, and financial hardship.

Based on the above, we conclude that while the supplemental evidence is consistent with the Applicant's previous claims of hardships to his spouse, it does not establish that there are any new facts concerning the spouse's physical and mental health conditions, her financial situation, or ability to travel abroad sufficient to show that her individual and cumulative hardships upon separation will be extreme. Consequently, the Applicant has not demonstrated that reopening of his waiver proceedings and issuance of a new decision is warranted. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring a noncitizen to show on motion to reopen that the new evidence would likely change the outcome in the case if the proceedings were reopened).

B. Motion to Reconsider

The Applicant also has not established a basis for reconsideration of our prior decision. The Applicant does not dispute that to establish eligibility for a waiver under section 212(i) of the Act he must show more than the usual level of hardship that commonly results from separation or relocation but contends, citing *Matter of Lopez-Monzon*, 17 I&N Dec. 280, 281 (Comm'r 1979), that "Congress clearly intended the waiver to be applied for purposes of family unity and with other humanitarian concerns in mind." He asserts that our decision was therefore based on an incorrect application of law, and that we improperly discounted a plethora of documentation related to his spouse's extreme hardship, which included an extensive brief detailing the various medical conditions she suffered, as well as the extreme hardship she would experience if he were to be removed from the United States.

As an initial matter, the Applicant's reliance on *Matter of Lopez-Monzon* is misplaced, because that decision addressed eligibility criteria for a waiver under former section 212(i) of the Act,[4] which did not require a showing of extreme hardship. Rather, to qualify for a waiver of fraud or misrepresentation under former section 212(i) of the Act, noncitizens had to establish only that they were a spouse, parent, or child of a U.S. citizen or lawful permanent resident, or that more than 10 years had passed since the commission of the fraud or misrepresentation.[5] Thus, he has not demonstrated that we erred by not taking into account family unity and humanitarian considerations in evaluating his eligibility for a waiver under section 212(i) of the Act, as currently in effect.

Furthermore, we determine an individual's eligibility for the immigration benefit sought not by the quantity of evidence alone, but also by its quality. *Matter of E-M-*, 20 I&N Dec. 77, 80 (BIA 1989). As stated, in dismissing the Applicant's appeal we considered all relevant evidence, including letters from the Applicant and his spouse, their medical and financial records, as well as reports about the country conditions in India, and explained why it was not sufficient to establish that if the Applicant is denied admission his spouse's individual and cumulative hardships would be extreme.

On motion, the Applicant states that his son cannot substitute for him as a husband to his aging spouse or a business owner, and it is not fair to assume that his son must take on those roles in his absence. He further states that in evaluating extreme hardship to his spouse we did not give proper weight to the conditions in India and the distance she would have to travel to see him, and that our decision was therefore arbitrary and capricious.

We acknowledge that the Applicant disagrees with how we evaluated the evidence he previously provided, and the weight we afforded the medical, financial, and country conditions documents; however, as he does not point to any specific legal or USCIS policy errors in our analysis, we have no basis to reexamine our previous determination that the evidence in the record at the time we dismissed the Applicant's appeal was not adequate to establish extreme hardship to his spouse upon separation.

We also acknowledge the Applicant's statement that he merits a favorable exercise of discretion, as well as the letters from his friends, neighbors, and employees attesting to his character, community involvement, and business ownership. However, as the Applicant has not established the requisite extreme hardship to his spouse, we need not address at this time whether he would merit a waiver as a matter of discretion.

III. CONCLUSION

We previously determined that the preponderance of the evidence in the record was inadequate to show that the claimed emotional, medical and financial hardships to his spouse considered individually and in the aggregate would rise to the level of extreme upon separation. The supplemental evidence

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[4] Added by the Immigration Act of 1961, Pub. L. 87-301, 75 Stat 655 (Sept. 26, 1961).

[5] *See Matter of Alonzo*, 17 I&N Dec. 292, 294-295 (BIA 1979) (holding that the [former] section 212(i) waiver should be granted in the exercise of discretion, where favorable factors are present, and in absence of countervailing adverse factors; there is no statutory or other requirement that extreme hardship be shown). The extreme hardship requirement was added in 1996, when former section 212(i) was amended. *See* section 369 of the Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). The amendment also removed children as qualifying relatives for purposes of a waiver under section 212(i) of the Act. *Id.*

the Applicant submits on motion does not support a different conclusion, and we therefore have no basis for reopening of the Applicant's waiver proceedings. The Applicant also has not shown that we erred as a matter of law or USCIS policy in dismissing his appeal, or that our decision was incorrect based on the evidence in the record of proceedings at the time it was issued.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.