U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29403570

Date: DEC. 19, 2023

Motion on Administrative Appeals Office Decision

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

The Applicant, a native and citizen of China currently residing in the United States, 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 of material facts. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. Section 212(i) of the Act. If the noncitizen demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. Id.

The Director of the Queens, New York Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant was inadmissible for fraud or misrepresentation of material facts under section 212(a)(6)(C)(i) of the Act and the record did not establish that the Applicant's qualifying relative would experience extreme hardship if the Applicant were denied admission to the United States. We dismissed her subsequent appeal. The matter is now before us on a motion to reopen and motion to reconsider.

On motion, the Applicant submits a brief and additional evidence contesting our finding that the Applicant did not meet her burden to show her United States citizen spouse would suffer extreme hardship if the waiver is denied. The Applicant bears the burden of proof to demonstrate 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 motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion to reopen is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. See Matter of Coelho, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

A motion to reconsider must establish that our prior 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). Our review on motion to reconsider is limited to

reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In our prior decision, which we hereby incorporate by reference, we highlighted that the Applicant did not establish financial hardship if the Applicant was removed and her spouse remained in the United States, including that she did not sufficiently document the couple's current financial obligations or establish whether her spouse had other sources of income apart from his wages. We found that the record did not sufficiently establish that the financial, medical, and emotional effects of separation from the Applicant would be more serious than the type of hardship normally suffered when one is faced with the prospect of separation from one's spouse. See Matter of Pilch, 21 I&N Dec. at 630-31. Because the record did not include an affirmative statement regarding relocation or separation, the Applicant was required to establish extreme hardship to her spouse under both separation and relocation as described in agency policy. 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda. Because the Applicant did not demonstrate extreme hardship to her qualifying relative, her U.S. Citizen spouse, upon separation, we did not consider whether she has established extreme hardship upon relocation. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

On motion, the Applicant includes new evidence:

- A new statement by the Applicant saying that her spouse "has told [the Applicant] he would follow [her] to China if [the Applicant is] denied admission." The statement further asserts that if the Applicant is removed, she will leave her child in the custody of her spouse's relative.
- Tax returns and Forms W-2 for 2021 and 2022. The 2022 tax return reflects that the Applicant's spouse owns his own business doing "casual work."
- A mortgage statement for "a newly purchased house" owned by the Applicant's spouse in [redacted] Virginia.
- A lease agreement renting the property where the Applicant resides to her and her spouse.
- An auto loan statement; and
- An electric bill.

The Applicant argues in her new statement, accompanying her motions, that her spouse "told her" that he would relocate to China if her waiver application is denied. The Applicant's brief states that the Applicant's statement "unequivocally demonstrates that the applicant and her spouse would relocate to China if she was denied admission."

Upon review, the record does not establish by a preponderance of the evidence the Applicant's spouse's clear intent to relocate to China should the Applicant's waiver application be denied. "Generally, in the absence of inconsistent evidence, a credible, sworn statement from the qualifying relative of his or her intent to relocate or separate would generally suffice to demonstrate what the qualifying relative plans to do." 9 USCIS Policy Manual B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda. Here, the record does not contain a credible, sworn statement from the

qualifying relative spouse. In light of the foregoing, we find that the Applicant has not established the clear intent of her spouse.

The Applicant's new statement claims that her husband told her that he is determined to go to China notwithstanding the Applicant warning her husband of "the inferior facilities in China for therapy and treatment of his mental disease." We note that the motions are not accompanied by any new evidence relating to the Applicant's spouse's mental condition or medical facilities and treatment in China. We also find that the Applicant's statement on motion asserting that if the Applicant is removed, she will leave her child in the custody of her spouse's relative is not adequately corroborated. The record on motion does not contain evidence demonstrating reasonable provisions will be made for the child's care and support.[1] In addition, the hardship to the Applicant's United States citizen child may only be considered to the extent that it affects the potential level of hardship to the Applicant's husband, her qualifying relative for the waiver. Matter of Monreal, 23 I&N Dec. 56, 63 (BIA 2001). Here, there is no claim that the Applicant's plan to leave her child in the United States will have any impact on her spouse's claimed hardship.

In addition to the record lacking a credible, sworn statement of intent to relocate from the Applicant's spouse, the record shows the spouse now owns a house in Virginia and is paying a mortgage on that house. The Applicant's spouse's ownership of a house in Virginia raises questions as to whether he resides in the [redacted] Virginia house and, if so, whether he intends to continue to reside there. This property is solely in the Applicant's spouse's name.

On motion, the Applicant claims monthly liability totaling $4000 per month which includes rent for an apartment in New York and mortgage expense on a home in Virginia. The Applicant's spouse's sole ownership of a house in Virginia raises questions as to why the Applicant and her spouse require two living spaces and whether the house generates additional income that alters the financial hardship of the Applicant and her spouse. Accordingly, we are unable to clearly determine the financial circumstances of the Applicant's spouse.

Although the Applicant has submitted additional evidence in support of the motion to reopen, the Applicant has not established eligibility. On motion to reconsider, the Applicant has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] In Matter of Ige, the Board of Immigration Appeals held that a claim that a child will remain in the United States must be accompanied by evidence demonstrating that reasonable provisions will be made for the child's care and support. Matter of Ige, 20 I. & N. Dec. 880, 885 (BIA 1994).