U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23455229

Date: FEB. 8, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of South Korea, 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.

The Director of the Los Angeles, California Field Office denied the waiver application, concluding that the Applicant did not establish that her U.S. citizen spouse would experience extreme hardship. On appeal, the Applicant presented new evidence regarding hardship to her parents, who are also qualifying relatives. We dismissed the Applicant's appeal, concluding that the Applicant did not establish that her spouse and parents would experience extreme hardship. The matter is now before us on combined motions to reopen and reconsider.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will grant the motions and remand the matter to the Director for the entry of a new decision.

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration, be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy, and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

In our prior decision, which we incorporate here, we determined that the Applicant did not establish that her spouse and parents would experience extreme hardship. We also stated that the Applicant has not explained the basis for aggregating the hardship to her spouse with the hardship claims of her parents. On motion, the Applicant states that aggregating the hardship to her spouse and parents is proper, as explained in the USCIS Policy Manual. Further, the Applicant submits new evidence, which include: her parents' income tax returns from 2019 to 2021; her father's earning statements for his part-time job; a list of her parents' monthly expenses; her parents' bank statements; letters from her parents' medical doctors; letters from the Korean American Family Services for her parents; a letter from her mother-in-law's medical doctor; a list of prescribed medications for her mother-in-law; her and her spouse's bank statements; and a list of their monthly expenses.

We conclude that the combined motions meet the requirements under 8 C.F.R. § 103.5(a)(2) and (3). As the Applicant correctly points out, in cases where an applicant has more than one qualifying relative, if there is no single qualifying relative whose hardship alone is severe enough to be found "extreme," the extreme hardship standard would be met if the combination of hardships to two or more qualifying relatives in the aggregate rises to the level of extreme hardship.[1] Further, the Applicant submits new evidence on motion, which is material and was unavailable to the Director at the time of the denial of the waiver application. Therefore, we find it appropriate to remand the matter for the Director to determine if the combination of hardships to the Applicant's spouse and the parents in the aggregate rises to the level of extreme hardship. If the Director determines that the Applicant has established extreme hardship to her qualifying relatives, then the Director must consider whether the Applicant merits a favorable exercise of discretion.

ORDER: The motions are granted, and the matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[1] *See generally* 9 *USCIS Policy Manual* B.4(E), https://www.uscis.gov/policy-manual.