U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24133077

Date: JAN. 27, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of China, 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 Santa Ana, California Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the record did not establish that the Applicant's U.S. citizen spouse, her only qualifying relative, would experience extreme hardship if the waiver was not granted. We dismissed the Applicant's appeal of that decision, reaching the same conclusion. The Applicant subsequently filed three combined motions to reopen and reconsider, which were also dismissed. The matter is now before us on a fourth combined motion to reopen and reconsider. On motion, the Applicant has not submitted any additional evidence in support of her claim that her spouse will experience extreme hardship; however, she asserts that she has established her statutory eligibility for a waiver under section 212(i) of the Act, and prior contrary decisions were in error. Upon review, we will dismiss both motions.

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or U.S. Citizenship and Immigrations Services (USCIS) 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. Additionally, a review of any motion is limited to the bases supporting the prior adverse decision. 8 C.F.R. § 103.5(a)(1)(i). Thus, we examine any new arguments to the extent that they pertain to our dismissal of the Applicant's prior motions.

Any noncitizen 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, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, 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 result of deportation" and did not alone constitute extreme hardship). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). 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).

On motion, the Applicant contends we should reopen and reconsider our prior decision because it was flawed in failing to properly understand and consider the severity of her spouse's medical conditions. However, the Applicant does not reference any new facts to be proved nor does she present any additional documentary evidence on motion. As such, the brief and motion to reopen do not meet the requirements of a motion to reopen, as set out in regulations. 8 C.F.R. § 103.5(a)(2). Therefore, the motion to reopen must be dismissed.

The Applicant also argues we must reconsider our prior decision. Specifically, she references documentary evidence from her spouse's therapist and pastor as being sufficient to show the requisite degree of hardship should the Applicant be removed. In our most recent decision, we considered both of those pieces of evidence, in conjunction with the totality of the record, and discussed why the Applicant did not establish eligibility for the waiver. The Applicant further argues our previous decision incorrectly required her to establish her spouse "is somehow dependent on her financially." Our decision does not identify this as the standard to establish eligibility for a waiver; rather, our previous decision correctly explained the hardship that must be proven and includes the consideration of multiple factors raised by the Applicant, including emotional, medical, and financial hardship. The Applicant does not cite any portion of our decision nor any legal authority to establish our prior decision was based on the application of an incorrect legal standard. The Applicant has not established our prior decision was based on an incorrect application of law or USCIS policy at the time of that decision. As such, she has not demonstrated her motion satisfies the requirements of a motion to reconsider. Accordingly, the motion to reconsider must be denied, and the Applicant's waiver application remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.