U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26180560

Date: JUN. 05, 2023

Motion on Administrative Appeals Office Decision

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

The Applicant, a native and citizen of Pakistan, has applied to adjust status to that of a lawful permanent resident (LPR) and 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 Newark, New Jersey Field Office denied the application, concluding that the record did not establish that his qualifying relative – his lawful permanent resident (LPR) spouse – would suffer extreme hardship if his waiver were denied. The Applicant appealed the Director's decision to us, asserting the Director failed to fully consider all the evidence of hardship. We dismissed the Applicant's appeal, reaching the same conclusion as the Director, that the Applicant had not established his qualifying relative would suffer extreme hardship if his waiver were denied. The matter is now before us on a combined motion to reopen and reconsider. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). On motion, the Applicant has submitted new evidence in support of his application and continues to assert that he has established his qualifying relative will suffer extreme hardship. Upon review, we will dismiss both motions.

I. LAW

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. If the noncitizen demonstrates the existence of the required hardship, then they must also show that U.S. Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver. 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).

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 facts and arguments to the extent that they pertain to our dismissal of the Applicant's prior appeal.

II. ANALYSIS

In support of reopening, the Applicant submitted the following new evidence: updated affidavits from the Applicant, his spouse, and their children; a letter from a dentist regarding recent treatment his spouse received; an additional letter from his spouse's doctor; prescriptions for his spouse and proof they have been filled; a letter from a separate doctor; a compilation of household expenses and income; 2021 income tax returns; and updated country conditions evidence related to Pakistan. Additionally, the Applicant resubmitted numerous financial documents, such as prior tax returns, and a psychological evaluation of the Applicant's spouse.

The new evidence does not establish the Applicant's qualifying relative would suffer extreme hardship upon separation from the Applicant. The updated affidavit from the Applicant notes he pays the mortgage, and he suggests that his family would not be able to afford it in his absence. The summary of personal income and expenses for the Applicant does not provide a complete picture of the household financial situation and the impact separation would have on the Applicant's spouse. The summary lists a variety of sources of income for the Applicant and various expenses; however, there is nothing to explain how these expenses might change if the Applicant were absent, what the specific sources of income are, and whether the Applicant and his spouse have any savings or equity. Further, the Applicant has two adult children, and the new evidence does not indicate that they would be unable to provide some financial assistance to the qualifying relative in the future. The record similarly contains an incomplete picture of the Applicant and qualifying relative's family ties in the United States. The Applicant's spouse claims in her affidavit that she came to the United States initially to assist her brother and she lived with his family and cared for his children for many years, but the record does not contain updated information on his location and any potential support he could provide her in the future. The Applicant's affidavits similarly contain limited details about the Applicant's spouse's financial situation and no additional information about family ties in the United States. The Applicant's spouse claims in her affidavit that she is 55 years old and unable to care for herself, having never previously had a job. However, she also notes she has experience in caring for her brother's children, cooking, and cleaning, and the Applicant has not provided evidence that his spouse would

be unable to work in the future. The updated letter from her doctor notes that the Applicant's spouse has "several lifestyle limiting symptoms that prevent her from functioning and working on her own," going on to mention "she does not appear to be able to work at this time due to her medical illness." No additional detail was provided as to what illness or symptoms prevent her from working or as to the prognosis, treatment, and likelihood her condition and symptoms may improve.

Further, the Applicant's affidavit does not describe any specific assistance his spouse requires from the Applicant regarding her health issues, beyond financial and emotional support. The Applicant's first new affidavit mentions his spouse is "a heart, diabetes and stress patient." The Applicant states in his second new affidavit that his spouse's issues have gotten worse since his waiver was initially denied, and "[s]he will have to see a psychiatrist more often." However, the only evidence of mental health symptoms provided is the previously submitted affidavit from a psychologist who interviewed the Applicant's spouse in August 2021. The Applicant states in his second updated affidavit that his spouse has had ongoing care from the psychologist, but nothing has been provided to support that statement. Two additional letters from doctors have been provided, stating the Applicant's spouse suffers from anxiety; however, there are no medical records to support those statements or show ongoing treatment for her symptoms or conditions. We acknowledge the emotional difficulty faced by the Applicant's spouse when considering the possibility of separation, but the record does not establish the psychological hardship she would experience is beyond what is to be expected upon the removal of a loved one.

The Applicant has not provided substantial new evidence of any ongoing health issues in his spouse's case that would be significantly impacted by separation in the future. For example, the letter from the spouse's dentist does not indicate a need for ongoing care nor for assistance from the Applicant. Likewise, the updated physician letter notes the Applicant's spouse requires "full-time support," but it does not mention what specific support or assistance is needed. The record also does not indicate whether any needed support functions could be fulfilled by one or both of the Applicant's adult children in the event his waiver is denied. Thus, the new evidence provided with the Applicant's motion to reopen does not overcome the basis for our prior dismissal, and his application remains denied.

The Applicant also argues we must reconsider our prior decision. Specifically, he references his spouse's health issues, which are supported by documentary evidence in the record, as being sufficient to show the requisite degree of hardship should the Applicant be removed. In our most recent decision, we considered all of the evidence of the qualifying relative's health conditions, in conjunction with the totality of the record, and discussed why the Applicant did not establish eligibility for the waiver. 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, both to the qualifying relative directly and to the Applicant's spouse as a result of any difficulties their children would experience. 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. Accordingly, the motion to reconsider must be dismissed, and the Applicant's waiver application remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.