U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26842370

Date: JUN. 30, 2023

Motion on Administrative Appeals Office Decision

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

The Applicant has applied to become 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). U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver of inadmissibility if refusal of admission would result in extreme hardship to a qualifying relative.

The Director of the Manchester, New Hampshire Field Office denied the application, concluding that the record did not establish that the Applicant's U.S. citizen spouse would suffer extreme hardship in the event the Applicant were removed. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider. We incorporate our prior decision by reference.

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 dismiss the motions.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 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 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). 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).

II. ANALYSIS

Although the Applicant has submitted new facts and legal arguments sufficient to meet the motion to reopen and motion to reconsider requirements, the evidence in the record is ultimately insufficient to establish his eligibility.

A. The Applicant Has Not Established Extreme Hardship to his U.S. Citizen Spouse

We have taken into consideration the new documentation provided. The Applicant's spouse provides an updated affidavit outlining her difficulties in conceiving despite costly fertility interventions, as well as the difficulties she faced when terminating an ectopic pregnancy. She notes that she suffers from high blood pressure, for which she takes medication. She indicates that she lost two close family members in 2021, and that the Applicant helped her to cope with her grief. She also expands on her issues seeking therapy, as the providers she has been able to see have pushed her towards the use of pharmaceuticals, have not been specialized in fertility counseling, or have been male.

The Applicant has also provided letters from fertility centers and medical providers that corroborate his spouse's high blood pressure, sleep apnea, and fertility treatments. The Applicant argues that their separation will make conception impossible, particularly considering their existing struggles with fertility. She will therefore be deprived of the ability to become a mother if the Applicant is not admitted.

The Applicant then provides four letters of support attesting to the mental health assistance he provides to his spouse. These letters indicate that the Applicant's spouse has a history of alcohol abuse in the face of stressful circumstances, which she has overcome with the Applicant's assistance. They note that the Applicant helped his spouse through the loss of her family members and her infertility issues. They indicate that his spouse may be at higher risk of relapsing if he is denied admission. The Applicant also submits proof of his spouse's completion of a webinar to assist her in coping with trauma and loss.

The Applicant further argues that their financial situation has changed, as he and his spouse are now co-owners of a new home with a much higher mortgage than the condominium in which they previously resided. A copy of a mortgage statement is provided as support. The Applicant indicates that his removal to Brazil would result in his spouse's inability to pay her bills, which include a mortgage, utility bills, and student loans. As a result, she would either lose her home or accumulate a large amount of financial debt.

Turning to country conditions, the Applicant highlights the levels of insecurity in Brazil, in particular following a recent presidential election. The Applicant also notes that U.S. citizens are encouraged not to travel to certain parts of Brazil, including areas with informal housing developments. In discussing Brazil's current political and security situation, the Applicant contends that his spouse could not "relocate" to a violent country facing such issues. As the Applicant noted above, his spouse will not relocate. However, we take current country conditions in Brazil into account by considering the impact that removing the Applicant to this environment would have on his spouse.

After careful consideration, the new evidence submitted by the Applicant is insufficient to demonstrate that his spouse would suffer extreme hardship if he were removed. We are sympathetic to the family's struggles with fertility and acknowledge that separation would make conception difficult, if not impossible. While undoubtedly challenging, this difficulty is a common consequence of separation for any family seeking to bear children. Furthermore, the family's struggle with fertility exists independently of whether the Applicant is ultimately granted an inadmissibility waiver, as evidenced by the prior history of fertility interventions, and is not itself a consequence of the Applicant's removal.

We have also considered the additional information provided regarding the mental health of the Applicant's spouse. We acknowledge the letters from family members asserting that the Applicant's spouse has a history of alcohol or substance abuse in response to stressors, as well as a history of depression. These affidavits also indicate that the Applicant's spouse has recently lost family members, and that he assisted her in coping with these losses. However, the Applicant has not demonstrated that his spouse would be impacted by these mental health issues to an extent that would cause her extreme hardship.[1] We note despite her psychiatric history, the Applicant's spouse attained a higher education degree and pursued a professional career without the Applicant's support. We do not diminish the opinion of her psychiatric examiner that their separation has the potential to trigger a depressive episode. However, in addition to the possibility of seeking professional care for any such episode, the Applicant's spouse has indicated she lives in close proximity to her tight-knit family, who can also provide her with support.

The financial hardship the Applicant's spouse would incur also does not rise beyond the level of a common consequence of separation. Loss of income and decreased ability to manage payments are inherent in most separations. We do not doubt the Applicant's claim that he may have difficulty finding work in his area of expertise, architecture. We also appreciate that his separation from his spouse would cause economic detriment in the form of lower earnings and his spouse's increased difficulty in meeting their higher mortgage payments. However, we also take into account that this home was purchased after the Applicant and his spouse were put on notice that he was inadmissible and that his initial attempt to waive this inadmissibility was denied. It is reasonable to expect the Applicant and his spouse to act in accordance with their understanding of their immigration situation before altering their financial state. *See, e.g.*, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 567 (BIA 1999) (finding the qualifying relative's awareness of possible immigration consequences relevant to the hardship determination).

The country conditions reports the Applicant submitted also do not demonstrate that his removal would cause his wife extreme hardship. We appreciate that the reports show elevated risk in some areas of Brazil and a period of upheaval following the recent elections. However, the Applicant and his spouse have not indicated that he would be residing in these particular areas or that he would be impacted by political instability at this time. Much of the information provided with respect to his spouse's hardship relate to her ability to speak Portuguese and obtain employment in Brazil. However, as she has indicated she will not relocate to Brazil, she has no need to seek employment abroad or become proficient in Portuguese. The Applicant's spouse has not clearly indicated what hardship Brazil's current country conditions would cause her in the event they are separated.

[1] We address the Applicant's arguments regarding the sufficiency of our analysis of his spouse's mental health history below.

Ultimately, we conclude that the level of hardship that the Applicant's spouse would experience does not rise beyond the common consequences of deportation, even when all types of hardship are considered cumulatively.

B. The Applicant Has Not Demonstrated Error in Our Prior Decisions Sufficient to Establish Eligibility for a Waiver

The Applicant argues that the prior decisions on the case violated federal regulations and conflicted with the USCIS Policy Manual. 8 C.F.R. § 103.2(b)(16(i), *see generally* 7 *USCIS Policy Manual* A.11(B), https://www.uscis.gov/policy-manual. The Applicant contends that our prior decision characterized outside evidence relied on by the Director as neutral, benign, or informational. In particular, the Applicant highlights the Director's analysis of fertility treatment options in Brazil and information regarding the value of the Applicant's home. The Applicant argues that this evidence was adverse and that it was improperly introduced for the first time during the Director's denial; applicants must be given notice of adverse information through the issuance of a notice of intent to deny.

The Applicant further indicates that the Director erred in considering hardship in the event the Applicant's spouse were to relocate. The Applicant notes that his spouse has clearly stated she intends to remain in the United States, and therefore the only relevant situation to be analyzed is the Applicant's separation from his spouse. The Applicant argues that we compounded errors made by the Director in analyzing the Applicant's financial situation. Finally, the Applicant contends that we mischaracterized his spouse's history of seeking mental health treatment, incorrectly inserted our personal opinion regarding the needed treatment interventions, and minimized the importance of finding mental health treatment specifically tailored to his spouse's needs.

We first address the Applicant's arguments regarding our analysis of his spouse's mental health needs. The Applicant contends that we inserted the Director's unwarranted medical advice into our decision. The Applicant further argues that therapeutic intervention is not simply a matter of finding an appealing support group. He notes that his spouse requires specific parameters including a practitioner experienced in fertility counseling. While our overall decision adopted and affirmed the Director's findings, we specifically noted that we did not subscribe to the Director's "analysis regarding the psychological evaluations the Applicant submitted" on behalf of his spouse. Contrary to the Director, we gave full evidentiary weight to the psychological evaluations submitted, noting that a telephonic interview would have been necessary at the height of the COVID-19 pandemic. We credited the Applicant's spouse's explanations for why treatment had not been previously sought, highlighting her family's reticence to engage in therapy.

The Applicant maintains that we followed the Director's lead in requiring his spouse to take medication or seek therapy and found her failure to take medication to be indicative of a lack of extreme hardship. The Applicant therefore argues that the Director's medical opinion was inserted into our analysis rather than the opinion of a medical expert. However, this mischaracterizes our decision. Our decision did not require mental health interventions or medication to support a finding of extreme hardship. Rather, we based our decision on the body of evidence provided with respect to mental illness. We found that, while the psychological evaluations provided insight into a history of depression, they did not "establish the severity of her emotional hardship or the effects on her daily life." Our ultimate analysis of the hardship occasioned by these mental health issues did not require a

particular form of treatment. Our decision instead focused on the overall impact these psychological issues were likely to have in the event of the Applicant's removal.[2]

The Applicant next asks us to reconsider our interpretation of certain evidence relied on by the Director. The Applicant argues that the Director erroneously introduced evidence of fertility treatment options in Brazil, as well as valuation estimates for a condominium which was the marital home at the time of the decision. The Applicant argues that we failed to constrain the Director's decision, and that the Director's inclusion of these facts in the decision indicates they must have been relied on to reach the denial. The Applicant indicates that our regulations require adverse evidence to be presented to applicants prior to the final decision, and that we failed to follow this requirement.

The regulation the Applicant relies on does not require a prior disclosure of all evidence used in support of an unfavorable decision. Rather, this regulation requires USCIS to advise the applicant and offer the opportunity to rebut "derogatory information considered by the Service and of which the applicant or petitioner is unaware." 8 C.F.R. § 103.2(b)(16)(i). The evidence introduced by the Director was not derogatory, as it pertained only to a housing estimate and general country conditions in Brazil. While the Applicant contends that the Director introduced adverse information about the couple's fertility, the report the Applicant objects to is not specific to the Applicant or his spouse, and instead generally relates the state of fertility interventions in Brazil. Furthermore, any error made by the Director in relying on the contested information was harmless, as the preponderance of the evidence was insufficient to demonstrate extreme hardship to his U.S. citizen spouse.[3]

III. CONCLUSION

Although the Applicant has submitted additional evidence, he has not established eligibility for a waiver of inadmissibility based on extreme hardship to his U.S. citizen spouse. The Applicant also 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 motions 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.

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[2] Our decision indicated that it is unclear whether the Applicant's spouse's mental health situation would be similar had she followed the clinician's recommendations. Although the Applicant argues that intervention was not recommended unless her mental state deteriorated, the clinician's final recommendation was to "obtain treatment, particularly if her depression worsens." Our reference to recommended treatment was therefore based on the opinion of a medical professional that treatment would be beneficial. However, as noted above, we fully credited the Applicant's explanations for why such treatment was difficult to obtain, particularly given her family's aversion to interventions, and our decision on mental health was based on the entirety of the evidence provided.

[3] The Applicant also challenges the Director's consideration of fertility treatments available to the Applicant's spouse in Brazil. The Applicant argues that this was error, as she will not relocate to Brazil. The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Our appeal decision correctly limited its analysis to consideration of hardship in the event of the Applicant's separation from his spouse; any error in the Director's decision with respect to relocation was corrected on appeal.