



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 24663773

Date: MAR. 1, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a citizen of Ghana, 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). U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative. The Director of the Washington, DC Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish the requisite extreme hardship to the Applicant's spouse, the only qualifying relative in this case. The matter is now before us on a combined motion to reopen and motion to 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Any foreign national 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). This ground of inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent. Section 212(i) of the Act. If the applicant demonstrates the existence of the required extreme hardship to a qualifying relative, then they must also show that USCIS should favorably exercise its discretion to grant the waiver. *Id.*

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 our decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We must dismiss a motion that does not satisfy the applicable requirements. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

In our decision on appeal, incorporated here by reference, we noted that the Applicant does not contest his inadmissibility under section 212(a)(6)(C)(i) of the Act. We adopted and affirmed the Director's decision denying the waiver application, agreeing with the Director that the Applicant had not demonstrated that his spouse would suffer extreme hardship if he were denied admission. We acknowledged the Applicant's claim that his spouse, who would remain in the United States and be separated from the Applicant, would struggle to care for their children as a single parent. In particular, we noted a psychological evaluation indicating that the Applicant's spouse has immature psychological defenses, but agreed with the Director that the evidence did not show she would be unable to work or handle other daily activities without the Applicant's assistance. Furthermore, we observed that his spouse has many close family members living nearby and there was no evidence that the couple's children have special needs. We acknowledged the Applicant's claim that his spouse and children would become impoverished and lose the medical insurance the Applicant's job provides, but determined the evidence was insufficient to support a determination that the hardship to his spouse would rise beyond the common results of removal or inadmissibility. *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).

On motion, the Applicant submits new evidence in support of his claim that his spouse and children would live in poverty in his absence. He asserts that we and the Director failed to fully consider the evidence of his family's financial situation and that even if he were able to find work in Ghana, his spouse and children would become impoverished in the United States. He emphasizes that his spouse works two jobs for total earnings of \$25,000 per year and the family depends on the health insurance the Applicant receives through his job as a custodian with a school district. He indicates that he pays \$3,400 for health insurance per year, the cost of which would be passed to his spouse in his absence, resulting in her annual income of just over \$20,000 for the household, which is below federal poverty guidelines. Additionally, without help from the Applicant his spouse would have to pay for childcare or work fewer hours in order to care for the children, further impacting the family's financial situation. Also, the Applicant states that even if he were able to find work in Ghana, he would be unable to earn enough to support his family in the United States. Finally, he indicates that although his spouse does not have a formal mental health diagnosis, she continues to experience psychiatric symptoms that affect her life and would likely worsen if the Applicant were unable to remain in this country.

As supporting evidence on motion, the Applicant provides a new statement from his spouse, who indicates she is pregnant with the couple's fourth child. She states she has felt "impaired mentally and physically" since the dismissal of the Applicant's appeal, which has interfered with her ability to work and care for her children. Additionally, she notes that the Applicant works during the day and then cares for the children at night and in the mornings before school, allowing her to work the night shift as an assistant nurse. She states that although she has family members in the United States, they do not live nearby and are unable to help support her and the children because of their own family and financial obligations. The Applicant also provides copies of the health insurance cards for himself and his spouse from the insurance his job provides; medical documentation of his spouse's pregnancy with their fourth child; and statements from his spouse's parents and two brothers explaining that they would be unable to help care for and financially support the Applicant's spouse and children. We also

note that the record contains previously submitted evidence that the Applicant's earnings currently provide approximately 66 percent of the household income and that the family would fall below the federal poverty guidelines if relying on his spouse's income alone.

Due to the new evidence the Applicant has submitted on motion, we will remand the matter to the Director to consider it in the first instance. The Director should evaluate whether the new evidence of financial, medical, psychological, and family hardship to the Applicant's spouse, when considered in the aggregate with the other evidence in the record, now establishes that she would suffer extreme hardship if separated from the Applicant. Additionally, if the Director finds extreme hardship, the Director should consider whether the Applicant merits a waiver in the exercise of discretion. We therefore grant the motion to reopen and remand this case to the Director for consideration of the new evidence. The motion to reconsider is moot.

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