U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25017960

Date: MAR. 10, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant 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. U.S. Citizenship and Immigration Services (USCIS) may grant this waiver as a matter of discretion if the refusal of admission would result in extreme hardship to a qualifying relative or relatives. The Director of the Philadelphia, Pennsylvania Field Office denied the Applicant's Form I-601, Application to Waive Inadmissibility Grounds (waiver application). We dismissed the Applicant's subsequent appeal and the matter is now before us on motion to reconsider. Upon review, we will dismiss the motion to reconsider.

A motion to reconsider is based on an incorrect application of law or policy to the prior decision. The requirements of a motion to reconsider are located at 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. The Petitioner 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).

The Director determined that the Applicant was inadmissible for fraud or misrepresentation under section 212(a)(6)(C) of the Act because he previously sought admission to the United States with a fraudulently obtained passport and U.S. nonimmigrant visa.[1] The Director then denied the Applicant's waiver application, concluding that he had not established extreme hardship to his U.S. citizen spouse, his only qualifying relative, and had not demonstrated that he merited a favorable exercise of discretion in granting his waiver. The Applicant appealed the matter to us, and we dismissed it, concluding that he had not established extreme hardship to his U.S. citizen spouse.[2] In our decision, incorporated here by reference, we acknowledged that the Applicant's spouse would experience some financial and emotional hardship if he is denied admission to the United States, but that, in aggregate, the Applicant had not offered evidence sufficient to establish that these hardships would exceed that which is usual or expected upon family separation. We did not reach the matter of whether the record established

[1] The Applicant did not contest this determination on appeal.

[2] As the Applicant had not established extreme hardship to his U.S. citizen spouse on appeal, we declined to reach his appellate argument regarding whether a favorable exercise of discretion was warranted. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

that the emotional and financial hardships to his spouse would exceed that is usual or expected upon her relocation to Ecuador (the Applicant's native country).[3]

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). While some degree of hardship to qualifying relatives is present in most cases, 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).

On motion, the Applicant again asserts that his U.S. citizen spouse would suffer extreme psychological and emotional hardship if he were not admitted to the United States. He notes that, per the *USCIS Policy Manual*, health conditions to be considered include the psychological impact on the qualifying relative due to separation from the Applicant or departure from the United States. The Applicant discusses his U.S. citizen spouse's bio-psychological evaluation submitted below, and the descriptions of past traumatic events she had experienced contained therein. He states that should he be denied admission to the United States, his U.S. citizen spouse would lose her only source of emotional support, and in the event of a forced separation, she might experience major psychological impact based upon prior trauma.

In our decision, we did not dispute that the Applicant's spouse would experience emotional hardship if he were denied admission to the United States. We acknowledged his spouse's statements and her bio-psychological evaluation in the record below and noted that in this evaluation she reported feeling severe sadness, fear, and anxiety as a result and emotional response to possibility of separation from him, as well as reexperiencing and remembering trauma and stressful events that occurred earlier in her life. We also discussed the mental health professional's determination that the Applicant's spouse is suffering from post-traumatic stress disorder and may continue experiencing moderate depression and anxiety which could require pharmacotherapy. However, after considering this evidence, we determined that it did not demonstrate that his spouse would experience hardship which exceeds that usually expected upon family separation. Beyond his assertions on motion, the Applicant does not explain or otherwise establish that our conclusion was incorrect based upon this evidence.

The Applicant further asserts that we erred in concluding that the Applicant's spouse would not experience economic hardship beyond that which is usually expected upon family separation if he were refused admission to the United States. He repeats his appellate argument that she would endure

[3] An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant, and 2) if the qualifying relative relocates overseas with the applicant. Establishing extreme hardship under both scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. The applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policy-manual. Here the record does not contain such a statement. The Applicant must therefore have established that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

extreme financial hardship because even with the assistance of the Applicant's income, his spouse still works 80 hours per week to meet their financial obligations. The Applicant contends that as he would be unable to contribute as much financially if he were removed to Ecuador, his spouse would experience economic hardship as she would be unable to work more than 80 hours to account for the decrease in his financial assistance. However, as we indicated in our decision, evidence in the record below reflected that the Applicant's spouse was the sole income earner from 2017 through 2020, and that she supported the family without the Applicant's financial contributions. Therefore, it is unclear how the absence of his income would result in extreme economic hardship to his spouse.

The Applicant contends on motion, however, that we erred in concluding that his spouse was the sole earner during that time because in fact he was employed from 2017 through early 2020 but was paid in cash. The Applicant newly submits an affidavit from his aunt in which she explains that he worked for her on a periodic basis from 2017 through early 2020, that he made approximately $50-60 per week working at her shop from 2017-2018, and that in 2019 he performed odd jobs for her. However, as we noted in our decision, the entries in the ledger of bills below do not indicate that the Applicant was responsible for or provided the financial means for paying the bills.[4] Thus, even considering this affidavit, the record remains unclear as to how or to what extent the Applicant used these earnings to contribute to the household's financial obligations prior to his fulltime employment.

We also acknowledge the Applicant's argument on motion that we incorrectly claimed that his stepson, a Marine, supported the Applicant's spouse during the time that the Applicant was not working. However, he misinterprets our analysis. In our decision, we observed that the Applicant's adult stepson appeared to be living in the same town as the Applicant's spouse, but that the Applicant had not explained whether his stepson would be able to assist his spouse with the household expenses if the Applicant were not admitted to the United States. Therefore, the Applicant has not shown that we were in error, as asserted.

Finally, the Applicant contends that we mischaracterized his father's home in Ecuador as large and did not consider the fact that he held no rights to the house, when determining that he had not established extreme hardship to his U.S. citizen spouse. Upon review, the Applicant made this claim to establish that his U.S. citizen spouse would experience extreme hardship upon her relocation to Ecuador with him. In our decision, we determined that he had not established extreme hardship to his U.S. citizen spouse upon separation, and therefore did not reach whether he had established extreme hardship upon his spouse's relocation. Accordingly, we find no error with our description of the Applicant's father's home in Ecuador as we did not reach our determination based upon it.

For the foregoing reasons, the Applicant has not established that our decision was based upon an incorrect application of law or policy or that it was incorrect based upon the record before us. He therefore has not satisfied the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3).

ORDER: The motion to reconsider is dismissed.

[4] The record below includes a handwritten ledger of bills paid in 2021.