U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26031906

Date: MAY 16, 2023

Motion on Administrative Appeals Office Decision

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

The Applicant, a native and citizen of Peru, has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Mount Laurel, New Jersey Field Office denied the application, concluding that the record did not establish that his qualifying relative – his U.S. citizen 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 Applicant subsequently filed a motion to reopen and motion to reconsider with us, and we dismissed both motions. The matter is now before us on a second 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 new evidence. He provided medical reports for his spouse, a letter from a licensed clinical social worker who has treated his spouse, a letter from one of his spouse's treating physicians, and personal statements from himself and his spouse. However, the evidence on the record, including new evidence submitted on motion to reopen, does not establish the Applicant's qualifying relative would suffer extreme hardship if the Applicant's waiver application is denied.

The Applicant states that he covers most of the household expenses and his spouse would not be able to handle it all on her own, but the evidence on the record indicates that she is employed and does not establish that she would be unable to meet her expenses in his absence. Newly submitted medical records from May, June, August, and November 2022 indicate the Applicant's spouse self-reported as employed in housekeeping and able to care for herself. The medical reports further indicate the spouse informed medical professionals she previously was a home health aide before the pandemic. She noted she still has a valid license and "could do this job in the future if need be." Further, the clinical notes from the Applicant's spouse's May 2022 medical visit indicate the Applicant and his spouse were considering moving in with one of their daughters to rent out the rooms in their larger home as an additional source of income. There is no indication in the record as to why this would not be an option for the spouse in the future should she need additional income. The record contains an incomplete picture of the couple's financial situation, such as evidence of the spouse's income, any savings, and exact expenses, which is necessary to fully determine the impact separation would have on the Applicant's spouse.

Similarly, the record is not clear as to the impact family ties would have on the spouse's future hardship. Through counsel, the Applicant states his spouse "has extensive family ties to the United States." According to medical records and the Applicant's statement, the couple's adult daughters live nearby, and the spouse sees them on a near daily basis. The notes from the April 2022 healthcare mention the Applicant's spouse noted she and the Applicant were considering selling their home and moving into one of their daughter's basements, and the record does not indicate this is no longer an option in the future. The Applicant's updated statement also indicates both his daughters are working professionals, employed by [redacted] Department of Children and Families. The record does not indicate that their daughters could not assist the Applicant's spouse as needed in the future, either financially or through necessary help managing her medical appointments and care.

Medical records submitted on motion identified the Applicant's spouse as still experiencing grief associated with the March 2020 death of her father, and she was found to have sadness related to her daughters recently moving out and her feelings of missing them. A letter from a licensed clinical social worker, dated in October 2022, indicate he had met with the Applicant's spouse multiple times, and stated that the spouse's anxiety and depression symptoms would worsen if her husband was not allowed to remain in the United States. We acknowledge the emotional difficulty faced by the Applicant's spouse when considering the possibility of separation from her spouse, but the evidence does not establish that her symptoms and the effects on her daily life would be beyond the common result of deportation or inadmissibility. *See Pilch*, 21 I&N Dec. at 630-31.

The evidence on the record does not establish that the hardship to the Applicant's spouse would be beyond what is to be expected upon the removal of a loved one. Overall, considered in its totality, the evidence on the record, including the new evidence submitted on motion, does not overcome the basis for our prior dismissal. Accordingly, the motion to reopen will be dismissed.

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 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, he has not demonstrated his motion satisfies the requirements of a motion to reconsider. 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.