U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19167474

Date: FEB. 2, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility for unlawful presence under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v).

The Director of the Phoenix, Arizona Field Office denied the waiver, concluding that the record did not establish, as required, that denial of admission would result in extreme hardship to the Applicant's U.S. citizen father, the only qualifying relative. We dismissed an appeal and subsequent combined motion to reconsider and reopen. The matter is now before us on a second motion filing.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motions.

I. LAW

Any foreign national who was unlawfully present in the United States for a period of more than 180 days but less than 1 year, or for 1 year or more, is inadmissible. Section 212(a)(9)(B)(i) of the Act. To be eligible for a waiver of inadmissibility, a foreign national must demonstrate that denial of waiver would result in extreme hardship to his or her U.S. citizen or lawful permanent resident spouse or parent. Section 212(a)(9)(B)(v) of the Act. A determination of whether denial of the waiver would 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). 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). Furthermore, if the applicant demonstrates the existence of the requisite hardship, then he or she must also establish that U.S. Citizenship and Immigration Services should favorably exercise its discretion and grant the waiver application. Section 212(a)(9)(B)(v) of the Act. Moreover, in these proceedings, it is the applicant's burden to establish by a preponderance of the

evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). 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 arguments and facts to the extent that they pertain to our dismissal of the Applicant's prior combined motions to reconsider and reopen the proceeding.

II. ANALYSIS

In our appellate decision, we determined that although we recognized that separation may negatively affect the emotional and physical well-being of the Applicant's father, particularly because of the loss of his care and companionship, the Applicant did not sufficiently demonstrate his father's hardships would rise to the level of extreme hardship if separation occurred.[1] Specifically, while the Applicant claimed to be his father's primary caregiver because his two brothers worked, the record contained evidence that his father resided with his other brother [redacted] and the Applicant also worked a full-time schedule. Furthermore, the Applicant did not show why others could not take on the caregiving responsibilities in his absence, showing extreme hardship to his father.

In his previous motion, the Applicant asserted that due to the COVID-19 pandemic and the unavailability of his siblings to provide care, his father resided with him. Moreover, the Applicant claimed that his father previously resided with [redacted], but the family decided it would be better for their father to live with the Applicant because [redacted] worked at a detention facility and would be potentially exposed to COVID-19. Although the Applicant stated that his other brother [redacted] did not have a flexible schedule as the Applicant and is not as fluent in English, the record did not demonstrate that [redacted] could not take on the caregiving responsibilities.

As a preliminary matter, we note that the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). A motion does not entail *de novo* review of the entire record of proceedings or re-adjudication of the underlying benefit request. A motion to reconsider is limited to examination of incorrect application of law or policy while a motion to reopen is limited to consideration of new facts. Repetition of prior claims or arguments does not establish good cause to grant the motion. In the current motion, the Applicant claims that we "erroneously applied a presumption that [his] brothers can provide care for their father, apparently simply because of their presence in the United States and because [his father] previously lived with [his younger brother]." In addition, the Applicant references the *USCIS Policy Manual* relating to replacement care and asserts that as his father has a neurocognitive disorder, he qualifies as having a disability, and we "should find that replacement care is not realistically available and obtainable in this case and apply the heavy weight the disability determination is due to find extreme hardship here."

[1] We acknowledged that the record contained evidence that the Applicant's father suffers from high blood pressure, kidney disease, heart blockage, diabetes, and a neurocognitive disorder.

In cases involving separation, the applicant will need to show that the qualifying relative with a disability, or the relevant family member with a disability, generally requires the applicant's assistance for care due to the disability. Where replacement care is not realistically available and obtainable, the disability determination would often weigh heavily in support of a finding of extreme hardship. 9 *USCIS Policy Manual* B.5(E)(2), https://www.uscis.gov/policymanual. In our prior decision, we acknowledged his father's medical issues, including his diagnosis of a neurocognitive disorder.[2] Although he claimed that his father moved in with him after receiving our appellate decision, the Applicant did not establish that replacement care was not realistically available and obtainable. Specifically, as previously discussed, the Applicant did not demonstrate why [redacted] could not take on the caregiving responsibilities, showing that replacement care for his father was not realistically available and obtainable. While the Applicant claims that we assumed that his other brothers could care for his father, the burden remains with the Applicant to establish both the unavailability and unobtainability of replacement care. Because the Applicant did not demonstrate why [redacted] or others could not support his father in his absence, he did not show that we erred in applying USCIS policy.

In addition, the Applicant contends that his father's neurocognitive disorder diagnosed in the psychological evaluation reflects the importance of the Applicant remaining in his father's life to offer additional comfort during memory loss. However, at the time of the evaluation, his father was not residing with the Applicant; rather he was residing with [redacted] Moreover, the evaluation does not reflect that the Applicant cared for his father every day. In fact, the evaluation states that the Applicant visited his father on the days that [redacted] worked. While the evaluation states that if his father is separated from the Applicant it could create extreme emotional and physical hardship for his father, the Applicant was not residing with his father and caring for him at his home at the time of the evaluation. The evaluation did not explain how his father's living arrangements with [redacted] and periodic visits with the Applicant would cause his father extreme emotional and physical hardship upon separation. Furthermore, even though the Applicant now claims that his father resides with him, the record reflects that his spouse cares for his father throughout the day, discussed further below. The Applicant did not show how the claimed current living and caring conditions have impacted his father, in light of the fact that he submitted a psychological evaluation under different conditions.

Furthermore, the Applicant asserts that his father would face financial burdens because he "does not charge his [f]ather rent or other expenses; he only has to pay for his medical care not covered by state-funded health insurance, food, and personal items such as clothes" and his "[f]ather only has about $435.00 per month in income due to Social Security." While the Applicant references his own affidavit on appeal, he does not cite to any corroborating evidence. Here, the Applicant did not establish his father's financial standing, nor did he show that his father would suffer any economic hardships upon separation.

The Applicant also submits declarations from his father and his two brothers, an envelope addressed to his father, copies of his father's prescription labels, medical records for [redacted], a marriage certificate for [redacted] a birth certificate for [redacted]'s daughter, updated medical records for his father, and

[2] According to the psychological evaluation, a neurocognitive disorder was previously referred to as dementia that describes a wide range of symptoms associated with a decline in memory or other thinking skills severe enough to reduce a person's ability to perform everyday activities.

information regarding tennis elbow, plantar fibromatosis, colon polyps, and transurethral resection of the prostate. According to the Applicant's father, he has suffered other health problems since the filing of the last motion, including eczema, kidney disease, chronic prostate disease, and arthritis. Moreover, [redacted] states that his father has been in the Applicant's care since August 2020, his spouse and child needs his attention, and he has been suffering from gastrointestinal symptoms and tennis elbow. Further, [redacted] explains that he has gotten married, had a child, and has moved in with his spouse's parents.

Again, a motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original waiver application. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." However, the evidence relates to the Applicant's prior claims regarding his brothers' inabilities to care and support his father and do not show that his documentation constitutes "new facts" consistent with the regulation at 8 C.F.R. § 103.5(a)(2). Furthermore, while the Applicant provides evidence of additional health problems for his father and contends that "[t]he new evidence demonstrates that due to the qualifying relatives medical conditions simply living with their father and driving him to appointments is not enough – it requires fulltime care and attention," the record does not demonstrate that the Applicant provides such fulltime care and attention. As previously discussed in our appellate decision and above, the record indicates that the Applicant works every day while his spouse cares for the household. Moreover, both the Applicant and the father state in their declarations that the Applicant's spouse attends to the father throughout the day when the Applicant works.

Moreover, while the declarations claim that the father resides with the Applicant and the envelope is addressed to the father at the Applicant's address, the copies of prescription labels show the father residing at a different address, with the latest one dated in May 2021, a period of nine months after the father purportedly moved to the Applicant's residence. Inconsistencies in the record must be resolved with independent, object evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Regardless, the Applicant did not demonstrate why others could not provide the required attention for his father or why his spouse could not continue to do so in his absence. In light of the additional evidence, the Applicant did not sufficiently show that replacement care for his father is not realistically available and obtainable.

III. CONCLUSION

Because he has not established that our prior decision was based on an incorrect application of law or policy, the Applicant has not met the requirements for a motion to reconsider. Furthermore, the Applicant has not met requirements for a motion to reopen as the new evidence does sufficiently demonstrate that his father would suffer extreme hardship upon separation, considered both individually and collectively with the evidence contained in the record.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.