



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

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

In Re: 16715761

DATE: FEB. 8, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

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

The Director of the Nebraska Service Center denied the application, concluding that the record did not establish that the Applicant had a qualifying relative to be eligible for the waiver. We dismissed the subsequent appeal, concluding that the Applicant's U.S. citizen sister is not a qualifying relative under the statute and the record did not contain evidence that the Applicant had a qualifying U.S. citizen or lawful permanent resident spouse or parent, and that she was therefore ineligible for a waiver. The Applicant then filed a combined motion to reconsider and reopen the matter which included the Applicant's statement contending she is married to a U.S. citizen as well as a copy of the purported spouse's naturalization certificate. We subsequently denied the Applicant's combined motions for failure to allege our prior decision was incorrect as a matter of law or policy and not submitting sufficient evidence that she is married. The matter is now before us on a second combined motion to reopen and reconsider our previous decision.

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; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Except where a different standard is specified by law, an applicant must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). This office reviews the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon review, we will return the matter to the Director for the entry of a new decision.

**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 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. *Id.* § 103.5(a)(3).

## II. ANALYSIS

### A. Motion to Reconsider

On motion, the Applicant requests we reconsider our previous decision. However, the Applicant has not cited any law or policy that would indicate that our previous decision was based on an incorrect application of law or policy and so has not met the requirements for a motion to reconsider and argues the decision contained erroneous conclusions of law. We will therefore dismiss the Applicant's motion for failure to meet the requirements of a motion to reconsider. 8 C.F.R. § 103.5(a)(3).

### B. Motion to Reopen

On motion, the Applicant submits, for the first time, a marriage registration document indicating she has been married since 1981. Because the record does not indicate that the Director has reviewed this additional documentation before making her determination, we will return the matter to the Director to consider the new claims and evidence of extreme hardship and to determine whether the Applicant warrants a waiver in the exercise of discretion, if the Director finds that extreme hardship to one or more qualifying relatives has been established.<sup>1</sup>

**ORDER:** The motion to reconsider is dismissed.

**FURTHER ORDER:** The motion to reopen is sustained. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

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<sup>1</sup> The Applicant has also not addressed discrepancies in the record regarding her marital status such as the Forms I-130 filed on behalf of the Applicant listing her as "single" and unmarried as well as recent U.S. visa records indicating the Applicant has never been married. The Applicant should address these concerns in future matters.