U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17345065

Date: FEB. 24, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa and seeks a waiver of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h) and 1182(a)(9)(B)(v).

The Director of the Nebraska Service Center denied the application, noting that a Department of State consular officer had determined the Applicant was inadmissible under: (1) section 212(a)(9)(B)(i)(II) of the Act for unlawful presence; (2) section 212(a)(2)(A)(i)(I) of the Act for a crime involving moral turpitude; (3) section 212(a)(2)(B) of the Act for two or more convictions for which the aggregate sentences are five or more years of imprisonment; (4) section 212(a)(2)(A)(i)(II) of the Act for a controlled substance violation; and (5) section 212(a)(2)(C)(i) of the Act for drug trafficking. The Director found that there was no waiver available for the Applicant's inadmissibility for drug trafficking offenses under section 212(a)(2)(C)(i) for drug trafficking. We dismissed the Applicant's appeal because there is no waiver available for his drug trafficking offenses under section 212(a)(2)(C)(i) of the Act, and for his controlled substance violations under section 212(a)(2)(A)(i)(II).

The Applicant has filed a combined motion to reopen and reconsider that decision. On motion, the Applicant submits a cover letter, documentation related to his wife's hardship claims, and other documents already contained in the record.

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 motion.

I. MOTION REQUIREMENTS

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 (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the applicant has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, an applicant must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. LAW

We set forth the applicable law in our prior decision and hereby incorporate it by reference here.

III. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The issue before us is therefore whether the Applicant has submitted new facts to warrant reopening or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. We incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Applicant's claims on motion.

A. Motion to Reopen

As noted, a motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In our prior decision, we discussed the Applicant's inadmissibility, and the fact that a waiver was not available for his inadmissibility under sections 212(a)(2)(C)(i) (drug trafficking convictions), and 212(a)(2)(A)(i)(II) (controlled substance violations) of the Act. We did not discuss the Applicant's hardship claims because, as we explained, even if the Applicant established his qualifying relative (his wife) would experience hardship, he would remain inadmissible.

On motion, the Applicant explains that his wife needs his support because she is sick and is experiencing financial stress. He submits a letter from his wife's doctor at [redacted] to establish she suffers from diabetes and other health conditions. The Applicant also submits documentation to establish his wife earns $13.67 an hour, as well as information regarding her utility bills and bank account balance. We acknowledge this financial and medical evidence as well as the Applicant's statement. However, as we explained in our prior decision, because there is no waiver available for his inadmissibility under two sections of law, the evidence of his wife's financial and medical hardships is not relevant to our analysis.

The remaining evidence on motion establishes that the Applicant has many family ties in the United States, but for the same reason stated above, this evidence is not relevant to our analysis. The I-601 waiver application is a two-step adjudication. The first step is to establish that a waiver exists, and the second is to establish extreme hardship. If there is no step one, there is no basis upon which to proceed to step two. Since no waiver exists in the Applicant's case (step one), there is no basis upon which to proceed to an extreme hardship analysis (step two). As such, the additional evidence submitted in support of the motion to reopen is not a basis to reopen our prior decision because it is not relevant to our analysis. As such, the motion to reopen must be dismissed.

B. Motion to Reconsider

As discussed, a motion to reconsider must establish that our prior decision misapplied law or USCIS policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). The Applicant maintains that we erred in dismissing his appeal, however, he does not specifically identify or rebut any specific errors in our decision. A motion to reconsider must specify the factual and legal issues that were decided in error or overlooked in our prior decision. *Cf. Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). ("[A] motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior . . . decision. The moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in our initial decision . . . .")

On motion, the Applicant's statement includes reference to his 1988 conviction, and he contends that he received ineffective assistance of counsel during his criminal proceedings. First, we note that our records reflect that the Applicant has six convictions. His convictions occurred in 1976, 1984, 1985, 1992, 2003, and 2009. We have no record of a 1988 conviction. Nonetheless, by referencing ineffective assistance of counsel in his criminal proceedings, the Applicant appears to be going behind his conviction to argue that he should not have been convicted. We cannot go behind a conviction to assess an applicant's guilt or innocence. *See Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996). More importantly, the Applicant does not identify any legal, factual error or misapplication of USCIS policy in our prior decision. As such, the motion does not meet the requirements of a motion to reconsider, and the motion must be dismissed.

IV. CONCLUSION

For the reasons discussed, the evidence provided in support of the motion to reopen does not overcome the grounds underlying our prior decision, and the Applicant's motion to reconsider has not shown that our prior decision was based on an incorrect application of law or USCIS policy.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.