U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15785423

Date: MAR. 04, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application for Waiver of Inadmissibility Grounds

The Applicant, a native and citizen of Taiwan currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for unlawful presence under the Immigration and Nationality Act (the Act) section 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II).[1] He seeks a waiver of that inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a United States citizen or LPR spouse or parent.

The Director of the Newark, New Jersey Field Office denied the application, concluding that the record did not establish that the Applicant's qualifying relative would experience extreme hardship if his waiver application were denied. We dismissed the Applicant's appeal for the same reason. Subsequently, we dismissed the Applicant's combined motion to reopen and reconsider, which included no new evidence or arguments.[2] The matter is now before us on a motion to reconsider.

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 to reconsider.

I. MOTION REQUIREMENTS

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. 8 C.F.R. § 103.5(a)(3). We do not consider new facts or evidence in a motion to reconsider.

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[1] A noncitizen who has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

[2] The Applicant asserts that he submitted a brief with his first motion. The record does not indicate that we received this brief.

II. ANALYSIS

The issue on motion is whether the Applicant has shown that our prior 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. 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.

On motion, the Applicant contends that his qualifying relative, his U.S. citizen wife, would experience extreme economic hardship if he had to return to Taiwan while she remained in the United States. To support this claim, he submitted a brief which contends that we did not correctly calculate the family's income and that we failed to account for various taxes, bills, and other necessities when calculating how the loss of the Applicant's income would impact his wife.

According to the brief, the Applicant earns about $12,000 a year and his wife earns about $80,000 a year after taxes, for a total annual income of $92,000.[3] The brief further states that the family's mortgage and private school tuition costs alone "leave the family with very little means of support to cover additional expenses and necessities, including a car payment, insurance for the house and cars, credit card bills, life insurance, electrical, gas and water bills, house goods, food, clothing for the children, and expenses for their activities."

The underlying case record indicates that the mortgage costs $2,667 a month and the children's private school tuition is $1,635 a month. These two expenses therefore add up to $51,624 a year, leaving about $40,376 for all other annual costs. The record also includes bills indicating the following expenses:

- Life insurance: $67 a month;
- [redacted] card: $80 a month;
- [redacted] credit card: $239 minimum payment a month, $9,318 balance;
- [redacted] credit card: $85 minimum payment a month, $2,240 balance;
- Cable/internet: $114 a month;
- Gas: $22 a month; and
- Electricity: $242 a month.

These expenses add up to $10,188 a year, leaving $30,188 for all other expenses.

We acknowledge that the family has credit card debt, a mortgage, and other expenses. However, even without the Applicant's $12,000 a year in income, they would have $18,188 more earnings than expenses. Furthermore, the motion does not demonstrate that the Applicant would be unable to find work in Taiwan to support his family. This does not suffice to demonstrate that the Applicant's removal would lead to a loss of household income that constitutes extreme hardship.

[3] It is noted that the record contains no documentation of the family's income or expenses beyond 2016, over three years before the present motion was filed.

Additionally, there is no indication of why, for example, the children could not go to public school, which would save $19,620 annually in tuition. The "inability to maintain one's present standard of living" does not suffice to establish extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996).

The brief also claims that without the Applicant's caregiving for the children, his wife would suffer economic hardship because she would not be able to keep her job, which involves a daily two-hour commute each way. The brief does not explain why the Applicant is the only possible choice of childcare. It also does not explain why his wife, an accountant, would not be able to find a job with a shorter commute. Therefore, even in light of the present brief, the evidence of record does not suffice to demonstrate that the Applicant's family would undergo extreme financial hardship upon separation.

The Applicant's brief argues that the "substantial displacement" of his children's childcare should, in and of itself, qualify as extreme hardship, and that we failed to properly consider this hardship factor in our previous decision. Presently, the Applicant's wife drops the children off at school and the Applicant performs all other childcare duties until the evening when she returns home from work, an arrangement that would be disrupted if the waiver application were denied.

The Applicant's brief points out that "substantial displacement of care of applicant's children" is listed as a particularly significant factor in extreme hardship determinations in the USCIS Policy Manual. *See 9 USCIS Policy Manual* B.5(E)(5), https://www.uscis.gov/policymanual. The pertinent section states that such circumstances "would often weigh heavily" in support of an extreme hardship finding if, among other factors, "[t]he substantial shifting of caregiving or income-earning responsibilities under circumstances in which the ability to adequately care for the children would be significantly compromised." *Id.*

However, in the present instance, the record does not show that separation from the Applicant would significantly compromise his wife's ability to adequately care for their children. As noted above, the brief does not address the availability of any other means of childcare, such as a babysitter, after school program, or family members willing to help. It also does not address whether the Applicant's wife could get a job with a shorter commute, flexible hours, or any other accommodation that would more easily allow her to perform childcare duties. This does not suffice to establish that refusing admission to the Applicant would likely result in a displacement of childcare so substantial it would significantly compromise his wife's ability to provide adequate care.

We acknowledge that the Applicant's wife would experience hardship upon being separated from her husband. However, the totality of the evidence does not indicate that this hardship would be atypical or beyond what is expected under the circumstances. Taken in the aggregate, the evidence provided does not suffice to demonstrate that the Applicant's qualifying U.S. relative would experience extreme hardship if his waiver application were denied.

The Applicant has not established that our prior motion 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. *See* 8 C.F.R. § 103.5(a)(3). Therefore, we will dismiss the motion to reconsider.

ORDER: The motion to reconsider is dismissed.