U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29505672

Date: DEC. 7, 2023

Motion on Administrative Appeals Office Decision

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

The Applicant, a native and citizen of Indonesia, is inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), and seeks a waiver of this inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i). The Director of the San Bernadino, California Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant did not establish that her spouse, who is a lawful permanent resident (LPR), would experience extreme hardship if the waiver were denied. We dismissed the appeal, also concluding that she did not establish extreme hardship to her spouse. We then dismissed the Applicant's three subsequent motions to reopen and reconsider. The Applicant now files a fourth motion to reopen and reconsider.

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 show 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 proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). The Applicant has the burden to establish eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

In our most recent decision, incorporated here by reference, we determined that although the spouse will experience emotional, financial, and health-related hardship upon separation if he remains here without the Applicant, the evidence did not establish that he would experience extreme hardship upon separation. *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).

The scope of a motion is limited to the prior decision, and jurisdiction for the motion is limited to the official who made the latest decision in the proceeding. 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the prior motion. In the instant motion, the Applicant reasserts several arguments made and considered,

including a previous claim that her spouse would be unable to perform day to day functions without her personal assistance because of his diagnosis of dependent personality disorder. The Applicant did not submit an updated evaluation but instead asks that we reassess our prior determination regarding the spouse's reliance on the Applicant because she asserts we did not address the diagnosis of dependent personality disorder. This claim is unavailing because in our prior decision, we considered the spouse's medical conditions and his reliance on the Applicant for emotional, physical, and financial support, but determined that the Applicant did not establish that the spouse's hardship would rise to the level of extreme or go beyond that which typically results from separation.[1]

The Applicant also asserts that we incorrectly determined her sons would be available to assist their father because they live at home. We acknowledge that the sons work night shifts, sleep during the day, and cannot be as attentive as the Applicant, however as stated in our previous decision, the record does not establish the severity or frequency of the spouse's psychological and medical conditions or explain why the sons would not be able to provide any assistance to the spouse. Moreover, the Applicant has not submitted into the record supporting documentary evidence establishing that her spouse is unable to complete many of his daily tasks and responsibilities, as the evidence reflects that he does still work and own a business. In the end, the Applicant has not provided new analysis or arguments to establish that we erred in dismissing the prior motion or that the decision was based on an incorrect application of law or policy.[2]

In addition to the arguments made above, the Applicant submits with the instant motion the couple's 2022 taxes to establish that her spouse's income is declining. The Applicant's spouse is 65 years old and suffers from osteoarthritis in his knees and is not able to work many hours as a mechanic. On prior motion, we reviewed tax-related documents and recognized the Applicant is the primary wage earner yet determined the financial loss the Applicant's spouse would suffer upon separation is not beyond the common or typical results of removal. Upon review of the new evidence submitted on motion, and although we acknowledge that the Applicant's spouse is not able to work as many hours, again we determine that the loss of the Applicant's income would not cause her spouse to endure hardship rising to the level of extreme. *See Matter of O-J-O-*, 21 I&N Dec. 381, 385 (BIA 1996) (discussing that economic detriment alone is not sufficient to establish extreme hardship).

Here, the Applicant has not provided new facts or evidence to establish eligibility for the benefit sought. Moreover, the Applicant has not established that our prior decision was based on an incorrect application of law or policy, or that it was incorrect based on the evidence then before us. As such the Applicant has not met the requirements for a motion to reopen or a motion to reconsider. Therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

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[1] The Applicant has not submitted evidence that her spouse has received any medical care or treatment for his dependent personality disorder.

[2] To the extent the Applicant compares her case to *Matter of Pilch* and argues that she has established extreme hardship based on that case, we note the matters present different facts and are distinguishable based on the evidence in the record of proceedings.