U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32321011

Date: APR. 17, 2024

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico 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 fraud or misrepresentation and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Phoenix, Arizona Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), and we dismissed the Applicant's subsequent appeal, concluding that the evidence did not establish the requisite extreme hardship to the Applicant's only qualifying relative, her U.S. citizen spouse, if the Applicant is refused admission. The matter is now before us on combined motions to reopen and reconsider.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motions.

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 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. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). 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).

In our prior decision, which we incorporate here, we determined that the Applicant did not establish that her U.S. citizen spouse would experience extreme hardship if she were refused admission. We indicated that, while the Applicant documented her spouse's medical conditions and symptoms of anxiety and depression, the record did not delineate the extent to which he relies on her in getting treatment, managing his conditions and maintaining his mental health. We also noted that the record

did not establish the severity or frequency of his mental health or his medical conditions and any related symptoms or otherwise show they adversely affect his ability to perform daily tasks and continue to work as a landscaper, such that he requires the Applicant's presence and assistance and that his symptoms would be aggravated by separation. Additionally, we determined that the record was unclear as to whether the couple's adult children could assist the spouse with his medical conditions in the Applicant's absence. Further, while we acknowledged that the Applicant's spouse may experience some financial difficulties upon separation, we determined that the record did not support that they would exceed the common results of deportation and amount to extreme hardship. Specifically, we noted that the record did not show that the Applicant's spouse requires her financial support as he continues to work and is the sole income earner in their marriage. Additionally, we determined that the record did not indicate that the two adult sons who live with them, and the adult daughter who lives nearby, could not assist the spouse financially in the Applicant's absence. Furthermore, we also acknowledged the spouse's emotional ties to and reliance on the Applicant; however, when considered in the aggregate, we determined that the Applicant did not demonstrate particularly unusual physical, emotional, and financial hardships to her spouse upon separation that rises to the level of extreme hardship. Finally, we also recognized the Applicant's claim that there is violence and limited opportunities living in Mexico, which may be unsafe for her and her family when they visit her there. However, we concluded that apart from the Applicant's general assertion, the record did not sufficiently address this claim or describe any specific potential hardships to the Applicant in Mexico that would in turn affect her spouse.

On motion to reopen, the Applicant contends, through Counsel, that her U.S. citizen spouse's "health has deteriorated significantly as is evidenced by . . . medical records." The Applicant asserts that her spouse was in a car accident and hospitalized for a week following a diagnosis of pneumonia and has had significant issues with his colon that have required multiple visits to the emergency room and acute home care administered by the Applicant. The Applicant further states that her spouse has also "been experiencing depression due to the breakdown in his relationship with his children." The Applicant reports that her spouse has experienced memory loss, affecting his day-to-day life, including at the emergency room when he was asked routine questions. She indicates that her spouse is routinely forgetting tasks he has assigned himself and forgetting entire previous conversations within one day. The Applicant recounts that her spouse does not want to drive or go anywhere and relies solely on her to drive and take care of his day-to-day needs. She also indicates that her spouse requires suppositories and special creams, which he only allows her to administer as it is private and intrusive. The Applicant further reports that her spouse has not seen his sons since June 2023, is disappointed with his sons, there is no clear explanation of how to repair the distance that has arisen with his children, and he cannot rely on his children for support as his sons, specifically, have disappeared.

In support of the Applicant's spouse's medical hardship, the Applicant submits documents pertaining to his health. The Applicant submits an After Visit Summary from [redacted][1] for her spouse in November 2023 indicating that he addressed arthritis, a screening for colon cancer, preventative health care, type 2 diabetes mellitus with hyperlipidemia, and obesity with his physician and was prescribed a single medication: ibuprofen. The Applicant also submits evidence of her spouse's car accident in December 2023. However, the Arizona Crash Report, completed by an officer

[1] We note that the After Visit Summary indicates a total of 16 pages and the Applicant only submits pages 8-10. Without the missing pages, we cannot fully consider this document.

contemporaneously with the incident, specifically indicated the "injury severity" as "1- no injury" for the Applicant's spouse. The Applicant submits a [redacted] Emergency Final Report for her spouse's visit to the emergency room on the same day of his accident in December 2023, indicating the reason for the exam as an "eval[uation] for trauma injury." However, the Discharge Instructions[2] list a diagnosis of "MVA [motor vehicle accident] restrained driver" and "pneumonia," and prescribed three oral medications for a duration of seven days. The Applicant submits a document from [redacted] for her spouse's visit to the [redacted] Emergency Department in January 2024 for issues pertaining to his bowel movements. However, while this document addresses those issues and details the procedures that followed to alleviate his condition, it does not indicate that any medications or follow-up care were prescribed. Additionally, although the Applicant specifically reports, through Counsel, that her spouse is suffering from memory loss, this document outlines the physical examination of the Applicant's spouse and specifically indicates "mental status: he is alert and oriented to person, place, and time" under the neurological portion of the exam.[3] The Applicant then submits an [redacted] Clinical Summary from January 2024 for her spouse addressing the same issues pertaining to his bowel movements. Although the Applicant specifically reports, through Counsel, that her spouse requires suppositories and creams that only she is able to administer, the Patient Clinical Summary from January 2024 indicates that her spouse was prescribed suppositories and instructed to administer for only 14 days. The Applicant also submits a letter from [redacted] to excuse her spouse from work on January 19, 2024 through February 5, 2024 "due to ongoing issues." Here, while the Applicant reports, through Counsel, that her spouse is suffering from memory loss, depression, and deteriorating health, she has not submitted sufficient evidence to corroborate these claims.[4]

Finally, while the Applicant also reports, through Counsel, that her spouse has not seen his sons since June 2023 and he cannot rely on his children for support as his sons, specifically, have disappeared, she does not submit any evidence in support of this claim. Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. On motion, the Applicant does not submit any new evidence, to include her own statement or affidavit, or that of her spouse or other children. The Applicant's spouse has not addressed this issue in the record himself and Counsel does not indicate that he is unable to do so.

Based on the above, we conclude that while the supplemental evidence is consistent with the Applicant's previous claims of hardships to her spouse, it does not establish that there are any new facts concerning her spouse's physical and mental health conditions or his financial situation sufficient to show that his individual and cumulative hardships upon separation will be extreme. Consequently, the Applicant has not demonstrated that reopening of her waiver proceedings and issuance of a new decision is warranted. *See Matter of Coelho,* 20 I&N Dec. 464, 473 (BIA 1992) (requiring a

[2] We note that the Discharge Instructions indicate a total of 15 pages and the Applicant only submits pages 1-3 and 8-12. Without the missing pages, we cannot fully consider this document.

[3] The document also indicates "pulmonary effort is normal[;] no respiratory distress" and "normal breath sounds[;] no wheezing" under the pulmonary portion of the exam, thus indicating that his pneumonia resolved prior to this visit.

[4] We have addressed the deficiencies in the evidence submitted.

noncitizen to show on motion to reopen that the new evidence would likely change the outcome in the case if the proceedings were reopened).

On motion to reconsider, the Applicant, through Counsel, makes similar arguments previously made on appeal. Specifically, the Applicant contends that hardship must be considered in the aggregate in determining whether hardship exists to the qualifying relative. She concludes that if she were refused admission to the United States, her U.S. citizen spouse would experience extreme hardship that is unusual or beyond that which is expected upon deportation, as she is the only person he relies on to function on a daily basis and his memory loss, depression, and deteriorating health, in the aggregate, have made him wholly dependent on the Applicant. However, apart from these general assertions, the Applicant does not clearly identify any incorrect application of law or policy in our previous decision or specify how we erred based on the evidence before us at the time of our decision. 8 C.F.R. § 103.5(a)(3). The record reflects that we have fully considered the arguments and evidence before us on appeal. The Applicant does not allege any other error in our previous decision that would warrant reconsideration.

We previously determined that the preponderance of the evidence in the record was inadequate to show that the claimed emotional, medical and financial hardships to her spouse considered individually, and in the aggregate, would rise to the level of extreme upon separation. The supplemental evidence the Applicant submits on motion does not support a different conclusion, and we therefore have no basis for reopening of the Applicant's waiver proceedings. The Applicant also has not shown that we erred as a matter of law or USCIS policy in dismissing her appeal, or that our decision was incorrect based on the evidence in the record of proceedings at the time it was issued.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.