



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

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

In Re: 24706652

Date: Oct. 2, 2023

**Motion on Administrative Appeals Office Decision**

The Applicant, a native of Kenya, applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h). The Director of the Des Moines, Iowa Field Office denied the application, concluding that the Applicant was inadmissible under sections 212(a)(2)(B) of the Act and that the record did not establish that his qualifying relative would suffer extreme hardship if the Applicant were not granted the waiver. Section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), provides that any noncitizen convicted of two or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were five years or more is inadmissible. The Director also denied the waiver as a matter discretion due to inadmissibility under section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), (controlled substance trafficking), for which there is no waiver.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit 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 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon review, we will grant the motion and remand the matter for further proceedings.

**A. Motion to Reopen**

On motion to reopen, the Applicant submits updated letters from the Applicant and his spouse, an updated letter from the Applicant's wife's therapist, updated medical records for the Applicant and his mother-in-law, an income and expense worksheet for the Applicant and his wife, updated employment letters, paystubs and evidence of the Applicant's second job, a current lease, petition for forcible entry, vehicle titles and insurance, financial documents (bank account, credit card statements and utility bills), and Kenyan country conditions documentation. The Petitioner asserts that these new facts

establish eligibility, as they support extreme hardship on the Applicant's spouse, a U.S. citizen who previously was an asylee from Liberia.

In our last decision,<sup>1</sup> we observed that the Applicant's spouse was diagnosed with severe post-traumatic stress disorder (PTSD) arising from the atrocities she witnessed, and the trauma she endured, when she lived in Liberia during that country's civil war, including the murder of her father, her experience living in a refugee camp for years, and the mysterious loss of her child. The Applicant's spouse explained that she able to flee from her refugee camp and entered the United States and began a new life with full-time employment and a supportive community of friends and family. The Applicant's spouse also lives with and cares for her 82-year-old mother, who suffers from several serious medical ailments.

In our previous decision, we noted several deficiencies regarding the Applicant establishing extreme hardship to his spouse upon separation.<sup>2</sup> We stated that the record did not show the "Applicant's spouse's situation, or the symptoms she is experiencing, are unique or atypical compared to others in similar circumstances." Furthermore, the record did not show that "[the Applicant's spouse] has any physical or mental health issues that affect her ability to work or carry out other activities, or that she requires the Applicant's assistance to conduct her daily affairs." We stated that the social worker's evaluation "listed symptoms she suffers" but "did not address the exact nature and severity of these conditions and describe the specific family assistance she needs." We found that the record did not establish "the degree to which the Applicant's physical presence is required to manage them."

Regarding financial hardship, our previous decision stated that "the Applicant did not provide a detailed budget breaking down the family's monthly expenses and detailing his actual contribution to the expenses. Further, although the Applicant stated his spouse can work more hours since he is taking care of his mother-in-law, he did not provide any documentation to evidence the actual financial loss the family would incur if he had to leave." We noted that because "the Applicant's spouse has worked for the same company since 2013 and earns a salary of approximately \$33,000 per year[, w]ithout additional documentary evidence, it is difficult to determine the actual financial impact on the qualifying relative if the Applicant moved abroad since the spouse maintains full-time employment." We also observed that the Applicant had not submitted any documentation in support of the contention that he would not be able to obtain gainful employment abroad to assist in supporting his family as needed.

On motion, the Applicant has submitted evidence to address each of these deficiencies. For example, the Applicant's spouse's updated statement provides "[the Applicant] plays a vital role in my family, me and him take turns caring for my aging mom with frail health" so that the Applicant's spouse is able to work too. The Applicant's spouse explains that someone must be with her mother at all times. "Mom cannot go to a nursing home because she does not speak English." Without the Applicant, she "will be forced to quit [her] job hence no income to cater for our bills..."

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<sup>1</sup> Facts in our previous decision are incorporated by reference.

<sup>2</sup> The Applicant's brief argues that it was error for our previous decision to discuss hardship upon separation only, without analyzing the hardship if the Applicant's spouse relocates to Kenya. This argument is both incorrect and moot.

Regarding financial hardship, the Applicant furnishes an itemized budget and financial records showing he is the main earner. The Applicant's spouse also explains that the Applicant is the main provider and her income is secondary. The evidence accompanying the motion to reopen shows that both the Applicant and his spouse work with vulnerable populations in the healthcare industry. The Applicant works at a nursing home and his spouse is a medication aid and resident aid at a facility for individuals with intellectual disabilities. The Applicant has supplemental income from hiring drivers to haul frozen foods in his semitruck. The Applicant's spouse states she did not finish school and therefore has low earning potential. The Applicant's spouse states that the Applicant cares for her ill and frail mother personally, making it possible for her to work. If the Applicant were removed, his spouse states that she would not be able to work to support herself and her mother.

The Applicant also furnishes documentation on motion to reopen in support of the contention that he would not be able to obtain gainful employment abroad to assist in supporting his family as needed. He includes a July 2022 article, "Kenyan Economy at the Brink of Collapse – US Financial Firm Warns," <https://www.kenyans.co.ke/news/77332-kenyan-economy-brink-collapsing-moodys-warns>, which discusses the economic crisis in Kenya. Also supplementing the record is evidence of a high inflation rate in Kenya and a September 2021 article, "Half of Kenya's jobless give up on work search" stating that "[d]ata by the Kenya National Bureau of Statistics (KNBS) covering the quarter ended March 2021 shows that 1.23 million out of the total of 2.49 million jobless Kenyans aged between 15 and 64 — and who qualify for the labour (sic) force — were not actively looking for employment." <https://www.businessdailyafrica.com/bd/economy/half-of-kenya-s-jobless-give-up-work-search-3567772>. In a similar vein, an April 2023 article from the same publication says that 67 percent of Kenya's jobless give up on work search, stating that the KNBS data covering the quarter that ended December 2022 show that 2.01 million out of the total of 2.97 million jobless Kenyans aged between 15 and 64 — and who qualify for the labor force — were not actively looking for employment. This is an increase from 65.08 percent in September and 54.1 percent in June 2020. <https://www.businessdailyafrica.com/bd/economy/half-of-kenya-s-jobless-give-up-work-search-3567772>.

We will grant the motion to reopen based on the new evidence and return the matter to the Director to consider the new claims and evidence of extreme hardship upon separation.

#### B. Motion to Reconsider

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.

On motion to reconsider, the Applicant contests the correctness of our prior decision. In support of the motion, the Petitioner asserts we erroneously stated the Applicant was applying for a waiver under section 212(i) of the Act rather than section 212(h) of the Act. We agree that the Applicant seeks a waiver under section 212(h) of the Act.

In our previous decision, we did not reach the Director's discretionary denial of the waiver based on the controlled substance trafficking inadmissibility. The record reflects the Applicant has no arrests, convictions or incidents involving controlled substance trafficking. Therefore, the record does not show that the Applicant is inadmissible under INA section 212(a)(2)(C) of the Act, and the Director erred in "determining that exercising discretion in [the Applicant's] favor is not warranted due to [his] inadmissibility under INA section 212(a)(2)(C), for which there is no waiver." Regarding discretion, the Director may consider favorable factors including, but not limited to, hardship on the qualifying relative, eligibility for the waiver, hardship on non-qualifying relatives or employers, significant health concerns of the qualifying relative, and evidence of the Applicant's reformation of character and rehabilitation. See 9 USCIS Policy Manual, *supra*, at B.5, <https://www.uscis.gov/policy-manual/volume-9-part-a-chapter-5>.

We will return the matter to the Director to consider the new claims and evidence of extreme hardship upon separation and to determine whether the Applicant warrants a waiver in the exercise of discretion.

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

FURTHER ORDER: The motion to reconsider is granted and the matter remanded for entry of a new decision consistent with the foregoing analysis.