U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27529911

Date: SEPT. 27, 2023

Motion on Administrative Appeals Office Decision

Form I-612, Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Immigration and Nationality Act, as Amended)

The Applicant seeks a waiver of the two-year foreign residence requirement for certain J nonimmigrant visa holders. Immigration and Nationality Act (the Act) section 212(e), 8 U.S.C. § 1182(e).

The Director of the California Service Center denied the application, concluding that the record did not establish, as required, that the Applicant's compliance with the two-year foreign residence requirement would result in exceptional hardship to a qualifying relative. We dismissed a subsequent appeal on the same basis. On motion to reopen and reconsider, the Applicant submits additional evidence and asserts that her U.S. citizen spouse will suffer exceptional hardship if she complies with the two-year foreign residence requirement. The Applicant bears the burden of proof to demonstrate 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 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.

The issue before us is whether the Applicant has submitted new facts supported by documentary evidence sufficient to warrant reopening her appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. We find that the Applicant has not submitted new facts supported by documentary evidence sufficient to warrant reopening her appeal 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.

In adjudicating the Applicant's request for a hardship waiver, we first look to see if the Applicant has established that her U.S. citizen spouse would experience exceptional hardship if he relocated to the Philippines with the Applicant for a two-year period. In our decision to dismiss the Applicant's appeal,

we concurred with the Director that exceptional hardship to the Applicant's spouse on relocation had been established This finding continues to be supported by the record and will not be disturbed on motion.

Regarding separation, we determined on appeal that the Applicant had not sufficiently addressed or overcome the deficiencies discussed in the Director's decision regarding separation. We acknowledged the Applicant's spouse's statements, the submitted medical records, and the December 2021 clinical evaluation regarding the emotional and medical hardship that a separation would cause the Applicant's spouse. However, the Applicant had not submitted any documentation on appeal to establish her spouse's current health conditions; what, if any, limitations exist with respect to his ability to care for himself; and what hardships he would experience were the Applicant specifically to relocate abroad. We noted that the record established that the Applicant's spouse was able to work; earned a bachelor of science degree in June 2021; was continuing his studies to obtain a teaching license and "enter a teaching certification program"; and had a support network in the United States, including his parents and numerous siblings.

As for the financial hardship referenced, while we recognized that a two-year relocation to the Philippines would have an impact on the Applicant's and her spouse's financial circumstances, the documentation on appeal did not suffice to establish that the Applicant's spouse would not be able support himself and would thus experience financial hardship that rose to the level of exceptional hardship. Lastly, we detailed that we generally do not apply leniency where marriage occurring in the United States is used to support the contention that the exchange visitor's departure from the country would cause personal hardship.

On motion, the Applicant's spouse asserts that he has had to stop working due to chronic knee pain. As a result, he contends that the Applicant is the sole financial provider for the family and his health insurance is through her employment. The Applicant's spouse also maintains that even if he were able to resume his employment in the future, his income would not cover his expenses in case of separation and his family members are unable to assist him financially. The Applicant's spouse also contends that it is unlikely that the Applicant will be able to work immediately upon her return to the Philippines and she will thus be unable to support herself and assist him financially. Even if she were able to obtain employment in the Philippines, he again states on motion that her income would not be sufficient to help him in the United States. The Applicant's spouse also maintains that his mental health will worsen due to long-term separation from his spouse. Documentation of the Applicant's spouse's medical insurance coverage through his spouse and an updated letter from his therapist has been submitted on motion.

While we acknowledge the Applicant's spouse's assertion on motion that he had to stop working due to chronic knee pain, the Applicant has not submitted documentation in support, such as a letter from the Applicant's spouse's treating physician, to establish his current medical conditions, the treatment plan, the prognosis, and what impact or limitations, if any, his medical conditions have on his ability to work and support himself while the Applicant relocates abroad for a two-year period. Alternatively, the Applicant's spouse has not established with supporting documentation that he is unable to obtain gainful employment with health insurance that allows for physical accommodations as needed. Moreover, while the Applicant's spouse's therapist states that his efforts to obtain a teaching certification were derailed due to financial reasons, it is unclear at what stage the Applicant's spouse

is in obtaining his certification and why he is unable to continue pursuing the certification by finding alternate forms of funding.

As for counsel's assertions on motion with respect to the Applicant's spouse's financial shortfall were the Applicant to relocate abroad, we note that 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"). We also note that the Applicant and her spouse married in 2021, approximately two years ago. The record does not establish the financial hardships, if any, the spouse experienced before he married his spouse and had access to her financial contributions. As previously detailed in our decision to dismiss the appeal, we generally do not apply leniency where marriage occurring in the United States is used to support the contention that the exchange alien's departure from the country would cause personal hardship.

We recognize that a two-year separation would have an impact on the Applicant's spouse's financial and emotional circumstances, but the evidence submitted does not establish that the Applicant's would experience hardship that rises to the level of exceptional hardship.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.