U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25034480

Date: JUN. 9, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of the Dominican Republic, has applied to adjust status to that of a lawful permanent resident (LPR), which requires him to show, inter alia, that he is admissible to the United States. *See* section 245(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(a)(2). The Applicant concedes that he is inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), and seeks a waiver of this ground of inadmissibility under section 212(i) of the Act.[1] The Director of the New York City, New York Field Office, denied the wavier application, concluding that the Applicant did not establish that the only qualifying relative, his U.S. citizen spouse, would experience extreme hardship if the Applicant is denied admission, as required under section 212(i) of the Act. We subsequently dismissed the Applicant's appeal, concluding that he did not show the requisite hardship to his spouse. The Applicant now files a motion to reopen. Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought.

II. ANALYSIS

In our prior decision, incorporated here, we determined that the record did not clearly indicate whether the spouse intended to remain in the United States or relocate to the Dominican Republic with the Applicant if he is denied admission, and he therefore had to establish extreme hardship to his spouse both upon separation and relocation. On motion, he now asserts that his spouse has decided to remain in the United States, if the waiver request is denied, and submits additional evidence, including the spouse's updated statement and medical documents. The Applicant therefore must establish extreme hardship to his spouse upon separation and support relevant new facts with documentary evidence. [2]

[1] A noncitizen who is inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act may seek a waiver of this inadmissibility under section 212(i) of the Act by showing extreme hardship to the noncitizen's U.S. citizen or LPR spouse or parent upon refusal of admission *and* the waiver request warrants a favorable exercise of discretion.

[2] As stated in our decision on appeal, the Applicant admits that he is inadmissible under section 212(a)(6)(C)(i) of the Act and the record shows that he misrepresented his marital status during his nonimmigrant visa application process in 2018.

On motion, the Applicant reasserts that his 59-year-old spouse would experience medical, emotional, and financial difficulties upon separation that would amount to extreme hardship. The Applicant claims that his spouse heavily depends on his physical and emotional support in performing basic tasks because she suffers from painful preexisting and current medical issues that also limit her mobility. The spouse in her updated statement reasserts that she suffers from chronic medical conditions, including severe arthritis, pre-diabetes, asthma, obesity, high blood pressure, and high cholesterol, for which she is taking medications and receiving medical care. In addition to the preexisting conditions, she avers on motion that she has new health issues and suffers from additional chronic pain and limited motion in her shoulder, hip, and knees due to injuries she sustained in a March 2022 car accident.[3] She further states that because her health has deteriorated significantly following the accident, she relies even more on the Applicant. In support of these assertions, they submit on motion a March 2022 police accident report and the spouse's medical documents from April and May 2022, including letters from a chiropractor and a medical doctor addressing the spouse's accident-related injuries on her left shoulder, neck and back, and magnetic resonance imaging (MRI) results for her shoulders, knees, cervical spine, and lumbar spine. The Applicant also reiterates on motion that it would be very difficult for him to find work in the Dominican Republic and without equivalent financial support he is able to provide his spouse while in the United States, the spouse could not make ends meet through her two jobs and make payments for their mortgage and bills. The Applicant also avers that without his adequate financial support, the spouse's long work hours will further exacerbate her health.

We acknowledge that the spouse will experience difficulties if she remains in the United States without the Applicant. However, the evidence and arguments on motion do not establish that she would experience extreme hardship upon separation. While the record shows that the spouse has the stated medical conditions, it also reflects she continues to receive treatment and takes medication, and the medical documents do not establish the severity of her conditions she claims may amount to disability, nor do they reflect she is dependent on the Applicant as claimed. For instance, although the spouse asserts on motion that she may soon apply for disability benefits in part due to the car accident and related injuries that require greater assistance from the Applicant, the record does not contain evidence that she has applied for disability benefits. Moreover, notwithstanding a May 2022 medical doctor's letter stating that the spouse has opted for a left shoulder surgery following the accident, the record also does not contain evidence of this surgery. Similarly, although the couple's respective February 2022 statements indicate that the spouse was scheduled to have invasive surgery to reduce her weight and relieve her knee pain, which they state would necessitate more reliance on the Applicant, the record still lacks evidence of this other surgery and its claimed impact.

The spouse in her updated (September 2022) statement on motion also asserts that the March 2022 car accident significantly worsened her conditions, but the record only contains treatment letters primarily for her left shoulder and MRI results from April and May 2022 that do not support her claim that the accident also "punctured 3 discs in [her] back, four in [her] hip" and caused additional knee problems, as the medical providers' letters only generally note her "neck and back pain" and "lumbar and cervical radiculopathy [pinching of the nerves]" without indicating any punctures or specifying treatment plans for knee or spine issues related to the accident. A letter from the medical doctor dated April 5, 2022, also states that she was seen at the hospital after the car accident and notes that her "injuries were

[3] The spouse's March 2022 accident occurred during the pendency of the Applicant's appeal filed with us in January 2022, which we dismissed in August 2022. The Applicant filed the instant motion to reopen in October 2022.

diagnosed as stable" and she was "allowed to go home." Further, while there is evidence that she has received physical therapy soon after the accident and took medications, the medical documents on motion do not clearly indicate prognoses for her accident injuries, or otherwise show that she cannot continue her treatment and manage her conditions without the Applicant in the United States, where the spouse has resided since 1996 and has her support network.

The spouse nonetheless maintains that the Applicant regularly drives her to doctor's appointments and helps her with many daily tasks, including picking up medication, combing her hair, shopping, cleaning, doing the dishes and laundry, and cooking. She also adds that the Applicant gives her massages to cope with pain, and helps her shower, go to the bathroom, and get in and out of bed, whenever needed. However, the extent to which she relies on the Applicant out of health-related necessity remains unclear, and the record does not establish the severity or frequency of her claimed physical conditions and related symptoms to show that they are so debilitating and prevent her from independently performing daily tasks, as the record indicates that she continues to work full time up to 65 hours a week and the Applicant also works 40 hours a week.

The Applicant further argues that his spouse needs his financial support to pay the bills and mortgage. Although he did not submit new evidence on motion regarding financial hardship, we recognize the previously submitted documents, including their prior statements, tax documents, earnings and bank statements, and various bills. However, the spouse does not claim that she is unemployed or no longer remains the primary income-earner, and the record does not show that she cannot work or support herself financially. The record also does not indicate that her 24-year-old adult son requires her support or that he cannot assist her. Further, it is unclear whether the spouse's sister and nephew who live in [redacted] New York, and the spouse's three sisters planning to immigrate to the United States based on her sponsorship, can help. While we acknowledge the concerns related to diminished family income, the Applicant, who has a business degree and years of work experience, has not submitted sufficient evidence to show that he could not find a job and support his spouse while maintaining emotional ties from the Dominican Republic, where the spouse is originally from and has visited numerous times. Lastly, the couple's statements and the country conditions reports pertaining to discrimination, limited access to services, and disabled individuals in the Dominican Republic do not specifically address the Applicant's potential hardship that may in turn affect his spouse financially or emotionally. The remaining evidence does not specifically relate to the spouse's separation hardship or provide pertinent information that would otherwise establish extreme hardship.

We acknowledge that the spouse would experience hardship, including emotional hardship, upon separation from the Applicant. However, even considering the evidence in its totality, he has not established his eligibility for a waiver under section 212(i) of the Act, as the evidence of record does not show that the claimed hardship to his spouse upon separation would go beyond the common results of removal and amount to extreme hardship. Therefore, the Applicant has not demonstrated that reopening is warranted. We will thus dismiss the motion to reopen and the waiver application will remain denied.

ORDER: The motion to reopen is dismissed.