U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25051359

Date: JUN. 21, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Indonesia, has applied to adjust her status to that of a lawful permanent resident (LPR), which requires her to show, inter alia, she 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). She concedes that she 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 inadmissibility ground under section 212(i) of the Act, 8 U.S.C. § 1182(i). The Director of the San Bernardino, California Field Office, denied the waiver request, determining that she did not demonstrate that the only qualifying relative, her LPR spouse, would experience extreme hardship if the Applicant is denied admission. We dismissed the Applicant's appeal, also concluding that she did not establish extreme hardship to her spouse. We then dismissed the Applicant's motion to reopen and reconsider as well as a subsequent motion to reopen. She now files a third 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.

As stated in our previous decisions, an applicant may establish extreme hardship for purposes of a waiver under section 212(i) of the Act in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant, and 2) if the qualifying relative relocates overseas with the applicant. Establishing extreme hardship under both scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. The applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. *See generally* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda.

II. ANALYSIS

The sole issue on motion is whether the Applicant has established extreme hardship to her LPR spouse.[1] In our last July 2022 decision dismissing the Applicant's second motion to reopen, we determined that the record still did not indicate whether her spouse intends to remain in the United States or relocate to Indonesia with the Applicant if the waiver request is denied, and thus she must demonstrate extreme hardship to her spouse both upon separation and relocation. We then found that because she did not establish extreme hardship to her spouse upon relocation to Indonesia, the Applicant could not demonstrate extreme hardship both upon separation and relocation, as required. We thus did not reach whether she established extreme hardship to her spouse upon separation.

On motion, the Applicant's spouse now clearly states that he intends to remain in the United States, if the Applicant is denied admission, and the Applicant submits a brief and new evidence, including their recent tax related documents and the spouse's updated statement in support of the instant motion. The Applicant therefore must establish extreme hardship to her spouse upon separation and support relevant new facts with documentary evidence, in order to demonstrate that reopening is warranted.

On motion, the Applicant contends that her 64-year-old spouse would experience medical, emotional, and financial difficulties upon separation that would amount to extreme hardship. She claims that her spouse of over 35 years heavily relies on her support in performing daily tasks, including helping him take his medications and make doctor's appointments, pay bills, as well as other household tasks, because he suffers from preexisting conditions, including type 2 diabetes and high cholesterol, for which he is receives medical care and takes medications. In addition to these conditions, the spouse reasserts on motion that he requires greater emotional support from the Applicant because of his age and he has been suffering from deteriorating mental health conditions since 2018 due to her immigration problem. Along with two initial psychological evaluations, a January 2022 psychological evaluation indicates that his most recent diagnoses include major depressive disorder (recurrent, severe without psychotic feature), generalized anxiety disorder, and dependent personality disorder, for which he was prescribed a medication in 2018 and also recommended for monthly or bi-weekly outpatient services in 2021. He further reasserts that the Applicant is his primary caretaker and without her support, his conditions will significantly worsen. The record also includes statements from their three adult children, indicating that, although they may be able to help their father to some extent, they could not provide the kind of physical, emotional, and financial support that the Applicant provides for her spouse on a daily basis. The spouse also asserts that the Applicant is the primary income-earner and without her financial support it would be very hard for him to make ends meet.

We acknowledge that the spouse will experience emotional, financial, and health-related hardship upon separation if he remains here without the Applicant. However, the evidence does 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). While the record indicates that the spouse has type 2 diabetes and high cholesterol, he continues to receive medical care and takes medications for these

[1] As stated, the Applicant admits that she is inadmissible under section 212(a)(6)(C)(i) of the Act.

health issues, and the record does not establish that he cannot manage these conditions without the Applicant or that he relies on her in performing daily activities out of health-related necessity.

We also acknowledge the psychological evaluations in the record indicating the spouse's recent mental health diagnoses, emphasizing his reliance on the Applicant's emotional, physical, and financial support, and indicating that his conditions will worsen without the Applicant. However, the psychological evaluations do not establish the severity or frequency of the spouse's depressive symptoms, clearly indicate prognoses for his mental health conditions, or otherwise show that he cannot continue his treatment and manage his conditions without the Applicant in the United States. The first (2018) psychological report indicates his initial diagnosis for major depression (moderately severe) as a result of the Applicant's immigration problem and stated that "[i]f his condition worsens he will require further treatment including psychotherapy by a psychiatrist." However, despite the claim that the spouse's conditions have since deteriorated significantly, increasingly necessitating greater emotional reliance on the Applicant, the record does not show that he is taking the antidepressant prescribed in 2018 or any other prescriptions to address his mental health conditions, or that he is otherwise receiving therapy or participating in any of the recommended treatment plans set forth in the psychological evaluations. Additionally, while the last two psychological evaluations generally indicate that he has been diagnosed with the stated conditions due to "the frequency, intensity and duration" of his worsening depressive symptoms since 2018, as stated, they do not specify the frequency, duration, or severity of the symptoms and instead, broadly state that "he has been experiencing depressive symptoms for the past 4 years, *on an intermittent basis*." Therefore, the record does not establish the claimed severity or frequency of his psychological and emotional conditions and related symptoms to show that they are so debilitating and prevent him from independently performing daily tasks. Further, while the couple's two adult sons indicate that they have their own lives and both work night shifts as nurses and may not be able to provide the same level of attention and care for their father as the Applicant, the record indicates that they still reside with their father and does not show that they would be unable to assist him in his daily tasks.

The Applicant further argues that her spouse depends on her financial support. However, while we acknowledge the Applicant's assertions and evidence indicating that the spouse will suffer financial loss upon separation, she has not shown that the resulting hardship is beyond the common or typical results of removal. The financial documents contained in the record consists of the couple's tax-related documents, which indicate that the Applicant is the primary income-earner. These documents also indicate, however, that the spouse has his own business, continues to work as a part-time mechanic, and earns a lower income than that of the Applicant's in part due to the offsetting business expenses. The spouse and the adult children also provided statements relating to potential financial hardship upon separation, including expenses associated with traveling to Indonesia. However, while we recognize that the spouse will suffer financial harm upon separation, the record reflects he is employed and does not show that he cannot work or support himself financially. He is also concerned with losing his current health insurance through the Applicant's employment, but the record does not establish that he would be unable to obtain his own health insurance. Further, while we acknowledge that the Applicant may face difficulties related to finding employment overseas, the record does not indicate that she could not find a job in Indonesia, where she was born and raised, in order to help her spouse financially. The country conditions reports provided do not otherwise specifically address her potential hardship in Indonesia that may in turn adversely affect her spouse financially or emotionally. Lastly, the three adult children who are educated and work full time in the medical field indicate that

they can help the Applicant's spouse financially. The remaining evidence in the record does not specifically relate to the spouse's hardship upon separation or provide pertinent information that would otherwise establish extreme hardship.

As stated, we recognize that the Applicant's spouse would undoubtedly experience difficulties upon separation from the Applicant. However, even considering the evidence in its totality, the Applicant has not established that she is eligible for a waiver under section 212(i) of the Act, as the evidence of record does not show that the claimed difficulties to her 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 deny the motion to reopen, and the waiver application will remain denied.

ORDER: The motion to reopen is dismissed.