



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 26423124

DATE: May 19, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for committing fraud when obtaining a nonimmigrant visa. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The San Bernadino, California Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility and we dismissed an appeal and three subsequent motions. The matter is before us on a fourth motion to reopen and a motion to reconsider. The most recent AAO decision is from December 2022. On motion, the Applicant submits a brief and additional evidence advancing their eligibility claims. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will remand this case to the Director to assess new evidence of hardship.

A motion to reopen is based on new facts that are supported by documentary evidence, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). If warranted, we may grant requests that satisfy these requirements, then make a new eligibility determination.

We incorporate by reference the procedural history and the conclusions of each decision dating back to the Director's original decision on the waiver application. A motion to reopen must state new facts and be supported by documentary evidence. See 8 C.F.R. 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original application. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

The Applicant's motion to reopen is supported by a brief and new evidence of extreme hardship on the Applicant's U.S. citizen wife. While the Applicant's third motion to reopen was pending, his wife was diagnosed with "probable breast cancer" and instructed to make a follow-up appointment for

March 2023. The Applicant's motion is accompanied by a brief,¹ mammogram and breast ultrasound exam results interpreted by a medical doctor, an updated statement by the Applicant's wife, an updated psychological report for the Applicant's wife, photographs, and medical records (many of which were previously submitted). We remand this case to the Director to assess the impact of the probable breast cancer medical diagnosis on the hardship of the Applicant's wife.

The Applicant's wife's updated statement says she is 47 years old and wears diapers. The Applicant sometimes helps his wife change her diaper "as if [she] were a baby." The Applicant's wife states she is on a dexamethasone, a powerful drug, for her breast cancer. The Applicant administers medicine on time and figuratively has "become a private nurse who takes care of [his wife] and [their] children..." The Applicant's wife included photographs purporting to show the "cancerous tumors" and photograph of her drug prescription.

Because the record does not indicate that the Director has reviewed this additional documentation before forwarding the appeal to our office, we will return the matter to the Director to consider the new claims and evidence of extreme hardship and to determine whether the Applicant warrants a waiver in the exercise of discretion.

A motion to reconsider must state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). Because we are granting the motion to reopen, this decision need not reach a discussion of the motion to reconsider.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

¹ The Applicant's attorney's brief states the wife's "medical condition [Addison's disease] has worsened to the point that she was admitted to the hospital six (8) (sic) times from the years 2021 to 2022." It is not clear whether the Applicant claims six or eight hospitalizations.