U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9163980

Date: AUG. 27, 2020

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(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h).

The Director of the Jacksonville Field Office denied the application, concluding that the record did not establish that the Applicant's U.S. citizen spouse, one of the qualifying relatives[1] in this case, would suffer extreme hardship if she is denied admission. We dismissed a subsequent appeal, also concluding that the Applicant had not established that her U.S. citizen spouse or child would suffer extreme hardship.

The matter is currently before us on a combined motion to reopen and motion to reconsider. The Applicant submits additional evidence and asserts that her spouse and daughter will suffer extreme hardship if they are separated from her or relocate with her. The Applicant argues that we failed to consider the totality of the circumstances and all hardship factors; erred in according the mental health evaluation limited evidentiary weight; erred in failing to consider their financial records in their entirety; and failed to examine the hardship the family would suffer in the case of relocation. The Applicant does not contest her inadmissibility.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will we will grant the motion to reopen and affirm our prior decision dismissing the Applicant's appeal.

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). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and

[1] The Applicant also has a U.S. citizen daughter who is a qualifying relative; however, the Director's decision did not explicitly address the hardship to the daughter.

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).

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered "extreme," the hardship must exceed that which is usual or expected. *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). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

An applicant may show extreme hardship if the qualifying relative remains in the United States separated from the applicant and if the qualifying relative relocates overseas with the applicant. Demonstrating extreme hardship under both scenarios is not required if an applicant's evidence establishes that one of these scenarios would result from the denial of the waiver. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual.

II. ANALYSIS

The issues on motion are whether the Applicant has shown that our prior decision was incorrect as a matter of law or policy, or if she has presented new facts or evidence sufficient to demonstrate that her spouse and/or daughter will suffer extreme hardship upon relocation to the United Kingdom. We incorporate our prior decisions by reference and will repeat only certain facts and evidence as necessary to address the Applicant's claims on motion.

As previously discussed, to establish eligibility for a waiver of inadmissibility, an applicant must demonstrate extreme hardship to a qualifying relative in the event of separation and relocation, unless the applicant can establish that only one scenario, either separation or relocation, would result from denial of admission. An applicant can meet this burden by submitting a statement from a qualifying relative certifying under penalty of perjury that the qualifying relative would relocate or separate if the applicant is denied admission. The Applicant's spouse did not previously indicate a specific intent to either relocate or remain in the United States, but with the instant motion, he submits a statement indicating that as a result of his need to be with his wife and daughter, he intends to relocate with them to the United Kingdom, her native country. In our most recent decision dismissing the Applicant's appeal, we considered the evidence and determined that the Applicant had not shown her spouse or child would experience extreme hardship if they were separated. We found it unnecessary to also address relocation hardship, as the Applicant had not met the requirement to establish extreme hardship in both scenarios.

The Applicant submitted additional evidence with the instant motion, including the following: information regarding the Applicant's role in the family business, updated medical documentation for the Applicant's spouse, an updated statement from the Applicant, and updated information about the family business and its finances.

In the sworn statement from the Applicant's spouse, he states that since the dismissal of the appeal, he takes blood pressure medicine due to the stress. The Applicant's spouse also discusses the problems he had in the United Kingdom. The Applicant's spouse claims that his ex-spouse has threatened him several times in the United Kingdom, and since his departure, she has kept him from seeing his other daughter. He states that he was physically attacked in the United Kingdom due to his contentious relationship with his ex-spouse, and he had to report his ex-spouse to the police in the United Kingdom.

The Applicant's spouse explains that he attempted suicide in the United Kingdom just prior to meeting the Applicant and that the Applicant saved his life. The Applicant's spouse claims he would suffer severe depression due to being separated from his family in the United States. He also contends he would be unemployable because of his medical issues and his lack of a work permit. In addition, the Applicant's spouse claims that he would suffer financially because he would default on his bills and loans and he would be unable to pay child support to his older daughter. Finally, he notes that his younger daughter would be separated from her close family in the United States, including her only living grandmother and many cousins close in age. He claims his younger daughter does not have any family in the United Kingdom her age.

The Applicant argues that if her family relocates, they would lose their business and have to file for bankruptcy. She claims they have no place to live in the United Kingdom and finding a place to live would be very difficult. She also argues that her spouse would be unable to work, and the family could end up in a shelter. The Applicant maintains that her spouse will also suffer extreme emotional hardship due to his anxiety and depression.

Based on the totality of the evidence, we find that the Applicant's spouse and daughter would not experience hardship upon relocation with the Applicant that, when considered in the aggregate, rises to the level of extreme. The Applicant's spouse contends that due to his age, medical problems, race, status as ex-military, and lack of a work permit, he will be unable to obtain employment in the United Kingdom; however, the record does not support this contention. The Applicant's medical records do not indicate that he is unable to work. In addition, the record does not contain evidence that spouses of United Kingdom citizens are not eligible to work. Moreover, the record contains only anecdotal evidence to support the Applicant's claim that her spouse would be unable to obtain employment. In addition, the Applicant was able to obtain gainful employment in the United Kingdom in the past; the evidence does not suggest she would be unable to do so in the future. The Applicant claims they would lose their family business, in which they have invested substantial resources. The evidence does not indicate that they would be unable to sell their business to recoup their investment. We acknowledge that the Applicant's spouse would be living much closer to his abusive ex-spouse, however, the Applicant has not established that he could not live elsewhere in the United Kingdom, or that he could not avail himself of the protection of law enforcement.[2]

The record also establishes that the Applicant's spouse and daughter have family ties in the United Kingdom, although they may be less extensive than those in the United States. In addition, both the Applicant's spouse and daughter speak the language in the United Kingdom and have lived there

[2] The Applicant did not submit proof of any filed police reports or provide evidence of the complaint the Applicant's spouse filed through his chain of command.

before. The evidence does not suggest they would have difficulty assimilating or adjusting. Further, the Applicant's daughter is a citizen of the United Kingdom.

We find that the Applicant has not established that her spouse and daughter would suffer extreme hardship upon relocation to the United Kingdom. Accordingly, we affirm our prior decision dismissing the Applicant's appeal. The waiver application remains denied.

ORDER: The motion to reopen is granted and the prior decision is affirmed.