U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27333440

Date: JUNE 26, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of South Korea currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. See id.

The Director of the Los Angeles Field Office denied the application, concluding that since the Applicant is statutorily ineligible to adjust status under section 245(a) of the Act, 8 U.S.C. § 1255(a), adjudicating the Form I-601, Application for Waiver of Grounds of Inadmissibility, would serve no purpose. On appeal, the Applicant conceded inadmissibility and we affirmed the Director's decision. We agreed that, because the Applicant did not demonstrate eligibility for adjustment based on continuous, lawful status in the United States, adjudication of their waiver application would serve no purpose. On motion to reopen and reconsider, the Applicant pivoted, challenging the inadmissibility finding by asserting the truth of their claimed maintenance of full-time student visa status from July 2014 to March 2015 at a university whose president later pleaded guilty to admitting hundreds of F-1 students from about 2010 to 2015 without requiring them to regularly attend classes. We dismissed the motion. The matter returns to us on the Applicant's second combined motion to reopen and reconsider.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's*, Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must demonstrate our prior decision's misapplication of law or USCIS policy based on the evidence at the time of the decision's issuance. 8 C.F.R. § 103.5(a)(3).

We may grant motions that meet these requirements and establish eligibility for the requested benefit. 8 C.F.R. § 103.5(a)(1) (allowing USCIS to reopen or reconsider decisions "for proper cause shown"). Conversely, we must dismiss motions that do not meet applicable criteria. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

A. The Motion to Reopen

Contrary to regulatory requirements, the Applicant's motion to reopen does not demonstrate their eligibility for the requested waiver. The Applicant's seven-line brief proffers a "lengthy personal letter" from the Applicant "with more information as to what really happened between the period between [sic] July 2014 and March 2015." The Applicant's attorney asserts that "[a]s laid out in [the Applicant's] letter, most of what happened was outside of [the Applicant's] control and knowledge." The Applicant changes their narrative with an undated, unsigned, unaffirmed, and unsworn letter. Even considering this new letter, an explanation of how their break in continuous, lawful status in the United States was outside of their control and knowledge does not meet or excuse the Applicant's burden of establishing actual continuous, lawful status in the United States.

The Applicant asks for reopening "in light of what really happened" as laid out in the proffered letter and supporting documentation (resubmitted duplicates of documents in the record). The Applicant's letter does not demonstrate eligibility for adjustment based on continuous, lawful status in the United States. The Applicant has not established their eligibility to adjust status through their maintenance of F-1 nonimmigrant visa status in the United States from July 2014 to March 2015, see section 245(c)(2) of the Act, 8 U.S.C. § 1255(c)(2) (barring adjustment to most applicants who fail "to maintain continuously a lawful status since entry into the United States"), and thus there is no purpose served in adjudicating the waiver application.

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the new evidence the Petitioner submits is a letter which remains uncorroborated by independent, objective evidence and neither establishes new, relevant facts nor establishes that we erred in dismissing the prior motion. Because the Applicant has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the application anew and, therefore, the motion to reopen will be dismissed and the underlying petition remains denied.. 8 C.F.R. § 103.5(a)(4).

B. The Motion to Reconsider

The Applicant's motion to reconsider also does not demonstrate their eligibility for the requested waiver. Borrowing from the analysis above, the Applicant does not anywhere assert that our prior decision was a misapplication of law or USCIS policy based on the evidence at the time of the decision's issuance and, accordingly, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(4).

III. CONCLUSION

Neither the motion to reopen nor the motion to reconsider demonstrate the Applicant's eligibility for the requested waiver. We will therefore affirm our dismissal of the Applicant's appeal and subsequent motion to reopen and reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.