



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 28153057

Date: OCT. 02, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, who was determined to be inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), seeks a waiver of this inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Director of the Los Angeles, California Field Office, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant did not establish that the only qualifying relative, her U.S. citizen spouse, would experience extreme hardship if the waiver were denied. We dismissed a subsequent appeal, concluding that she did not establish the requisite hardship to her spouse. The matter is now before us on motion to reopen.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). The Applicant has the burden to establish eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

In our previous decision, incorporated here by reference, we determined that the record did not clearly indicate whether the Applicant's spouse intends to remain in the United States or relocate to China if the waiver request is denied, and the Applicant therefore had to establish extreme hardship to her spouse both upon separation and relocation. We dismissed the appeal, concluding that the hardship evidence, including an MRI result, psychological evaluations, and various statements and other documents, did not demonstrate extreme hardship to the spouse upon separation, and consequently, the Applicant could not establish the requisite hardship to her spouse both upon separation and relocation, as required.

On motion, the Applicant's spouse now asserts that he has decided to remain in the United States if the waiver request is denied. The Applicant therefore must establish extreme hardship to her spouse upon separation and support relevant new facts with documentary evidence.<sup>1</sup> Along with the spouse's

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<sup>1</sup> The Applicant on motion no longer disputes her inadmissibility under section 212(a)(6)(C)(i) of the Act for having misrepresented her marital status during her nonimmigrant visa application process.

new affidavit, the Applicant submits additional evidence on motion, including the spouse's updated medical report providing an assessment of the prior MRI result we previously considered during the appeal, as well as new letters from two employees of a law firm, where the spouse continues to work as a litigator and managing attorney, in addition to his solo law practice.

We acknowledge that the spouse will experience hardship if he remains in the United States without the Applicant. However, the evidence and arguments on motion do not establish that the Applicant's spouse would experience extreme hardship upon separation, or otherwise overcome the evidentiary deficiencies addressed in our decision dismissing the appeal.

In support of her motion, the Applicant reasserts that her 59-year-old spouse would experience medical, professional, and emotional difficulties upon separation that would amount to extreme hardship. She states that her spouse heavily depends on her personal assistance and emotional support in performing daily tasks and work duties in part because he suffers from diabetes, hypertension, and high stress, requiring ongoing attention and treatment, as well as other conditions that limit his short-term memory and cognitive abilities. In his new affidavit, the spouse reasserts that he is prone to high stress and he suffers from the stated medical conditions. The couple also avers that the spouse's potentially deteriorating memory loss may turn into dementia or Alzheimer's disease at some point in the future. Given these medical concerns and related potential risks, the Applicant asserts that her spouse would experience extreme hardship without her help in managing his health and work life.

While the record shows that the spouse has the stated medical conditions, including diabetes and high blood pressure, it also continues to reflect that he is able to control these conditions through regular medical care and medication. Further, as for the concerns related to the spouse's mental health and memory loss, the motion documents still do not sufficiently substantiate the claim that he suffers from a serious medical condition that requires ongoing assistance from the Applicant.

The only new medical document on motion, prepared by A-C-, M.D.<sup>2</sup> on February 22, 2023, does not establish the severity or frequency of the spouse's memory problem the Applicant claims may indicate a serious risk of permanent cognitive decline. This medical report was based on the MRI result conducted by another medical professional five months earlier in September 2022, which we reviewed on appeal. Although the updated report states that the spouse has been under doctor A-C-'s care soon after the MRI was taken and he has also had a "comprehensive neurologic evaluation including an electroencephalogram and cognitive evaluation," the record still does not contain any of these underlying medical documents. Further, while the updated report reiterates the short-term memory problem and related risks the spouse *might* experience in the future, the only impression finding, based on "a mini mental exam" was "mild cognitive impairment of aging," which the report notes may at some point become Alzheimer's disease, "50% of the time after 5 years."<sup>3</sup> Although the spouse appears to have sought and obtained various examinations and assessments, apart from these indications, the medical report submitted on motion does not now show that he suffers from a serious medical condition that requires the Applicant's ongoing assistance. The report also does not clearly delineate a treatment plan or prognoses, or indicate that the spouse cannot seek any future treatment

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<sup>2</sup> We use initials for privacy.

<sup>3</sup> The record also contains a letter from F-N-, M.D., stating that the spouse also had an MRI 25 years ago around 1998, which in this doctor's then opinion already indicated similar memory loss concerns due to "brain shrinkage." Based on this doctor's suggestion, the spouse then obtained the most recent MRI result in September 2022 for the appeal.

and manage his condition(s) without the Applicant in the United States, where he has resided since his birth and has his support network. The record also continues to lack evidence of any corresponding treatment for the spouse's previously stated mental health conditions, notwithstanding a psychologist's two separate evaluations in December 2020 and October 2021, each recommending treatment.

The spouse nonetheless continues to reassert that the Applicant's assistance at work is crucial to his success, in part due to her cultural background as well as her ability to organize and help with stress and memory loss. While the two new employee letters submitted on motion briefly note that he has been observed to have "a memory problem," often inviting reminders, the extent of this issue and its alleged impact on his professional capacity, remains unclear. One employee even states in her letter that the memory issue "does not impede on his ability to work so long" due to assistance from "the support staff." Moreover, the statements from the other employees, colleagues, and former clients, do not mention memory related concerns, except the letter from one employee, B-A-, stating that he also provides the spouse reminders about his cases. These statements and the remaining evidence of record do not otherwise sufficiently corroborate the claim that the spouse specifically relies on the Applicant for his work.

The spouse also asserts that the Applicant regularly helps him with other daily tasks, including shopping, and going to work, doctor's offices, and pharmacies. He further states that the Applicant regularly drives him because he has not driven for over 20 years due to his accident-prone nature; and she motivates him to exercise. But, as stated, the extent to which he relies on the Applicant out of medical or professional necessity remains unclear, and the record does not establish the severity or frequency of his stated conditions and related symptoms to show that they are so debilitating as to prevent him from independently performing daily tasks; indeed the record reflects that the Applicant's spouse works full time over 50 hours a week as a litigator, managing attorney, and solo practitioner. He further adds that he will soon be very well-off financially.<sup>4</sup> The record also lacks sufficiency evidence as to whether other individuals in the spouse's support system would be unable to help him. The remaining duplicative evidence on motion does not provide pertinent new information that would establish extreme hardship to the Applicant's spouse upon separation.

We acknowledge that the spouse would experience hardship, including emotional hardship, upon separation. However, even considering the evidence in its totality, the Applicant has not established her eligibility for a waiver under section 212(i) of the Act, as the evidence of record does not show that the claimed hardship to her spouse upon separation would go beyond the common results of removal and amount to extreme hardship. Consequently, she has not demonstrated that reopening is warranted. We will therefore dismiss the motion and the waiver application will remain denied. 8 C.F.R. § 103.5(a)(2).

**ORDER:** The motion to reopen is dismissed.

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<sup>4</sup> Although the Applicant states that her spouse may again face financial hardship in her absence, in part due to the spouse's inability to manage high stress without her, the couple nonetheless clearly state on motion that the prior claim of financial hardship is now "moot" because he will soon be able to pay off his substantial debt and will be "very well set financially."