U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: OCT 2 5 2004

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the previous decisions of the district director and the AAO will be affirmed.

The applicant is a native and citizen of Vietnam and permanent resident of Canada who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized United States citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated March 13, 2002. The decision of the district director was affirmed on appeal by the AAO. *Decision of the AAO*, dated October 2, 2002.

On motion to reconsider, counsel asserts that the applicant did not have any preconceived immigration intent and is therefore not subject to inadmissibility. Counsel contends that the applicant and her spouse misunderstood some of the questions asked at the applicant's interview. *Letter from Hanna C. Leung.*

In support of these assertions, counsel submits an affidavit of the applicant, dated October 28, 2002 and an affidavit of the applicant's spouse, dated October 28, 2002. The entire record was considered in rendering this decision.

The record reflects that the applicant procured admission into the United States as a temporary visitor on April 7, 2000 by willfully misrepresenting the material fact that it was her intention to remain permanently in the United States with her spouse.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

> 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)(3) (2002) states in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel asserts that the applicant did not make a material misrepresentation in her visa application. *Letter from Hanna C. Leung*. Counsel submits affidavits from the applicant and her spouse indicating that the applicant entered the United States to visit her husband and intended to return to Canada to resume her employment. The applicant and her spouse state that they misunderstood the questions asked of them pertaining to this issue in their interview with an immigration officer. *Affidavit of Lien Ngoc Vay*, dated October 28, 2002. The record fails to substantiate the claim of the applicant that she and her spouse have only a partial understanding of the English language and failed to understand the questions asked of them when interviewed. The AAO notes that the applicant's interview was not her first interaction with immigration officials and the record fails to reflect that the applicant and/or her spouse voiced concern about their comprehension of the interview questioning.

The applicant fails to provide evidence that was not available previously and could not have been discovered during the prior proceedings under this application. Further, the applicant fails to establish that the prior decision of the AAO was based on an incorrect application of law or Citizenship and Immigration Services policy.

The applicant has failed to identify any erroneous conclusion of law or statement of fact in her appeal. In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the previous decisions of the district director and the AAO will not be disturbed.

ORDER: The motion is granted. The decision of October 2, 2002 dismissing the appeal is affirmed.