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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CALIFORNIA Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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

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, but the previous decisions of the District Director and the AAO will be affirmed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States (U.S.) under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having used an alien registration card in another person's name to enter the United States. The applicant is married to a citizen of the United States and is the beneficiary of an approved petition for alien relative. She seeks a waiver of inadmissibility under § 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the U.S. with her husband and son.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and on July 24, 2002, denied the application accordingly. On March 19, 2003, the AAO affirmed the district director's decision on appeal. On April 22, 2003, the applicant filed a motion to reconsider through a previous attorney, In that motion, stated that the applicant's husband would suffer emotional, physical, and financial hardship if the applicant were removed from the United States. asserted that the applicant's husband had suffered a severe knee injury which required surgical repair, and that he would be incapacitated while recovering from the surgery. maintained that the applicant's husband could not accompany her to Mexico, as proper medical care would not be available there, her husband has few familial ties in Mexico, and his job prospects would be minimal there.

All of the above issues were brought up by the applicant on appeal and were addressed by the AAO. Mr. did not identify any legal errors in the prior AAO or district director decisions, and no new information or evidence was submitted in the motion to reconsider. pointed out, however, one area in which he contended the AAO erred in the factual basis upon which its dismissal of the appeal was based. stated that the AAO erred in characterizing the applicant's husband's prospective surgery as elective and in finding that his current medical condition was not serious enough to cause him extreme hardship in the applicant's absence.

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

> (a) Motions to reopen or reconsider
>
> . . . .
>
> (3) Requirements for motion to reconsider. 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 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.

Since specifically pointed out a material fact asserted to be in error, the evidence on the record has been reconsidered. Nevertheless, for reasons discussed below, the AAO finds the decision of the district director and the AAO's dismissal of the initial appeal to be correct.

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

> (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 that:

> (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.

On January 14, 2005, the applicant submitted, through her most recent counsel, another motion to reconsider the denial of her waiver application. The applicant did not write that her previous attorney, would no longer represent her. As has submitted a Form G-28 Notice of Entry of Appearance, however, it is assumed that currently represents the applicant on motion.

In this latest motion, counsel claims that the applicant is not subject to the § 212(a)(6)(C) inadmissibility grounds, since she "never alleged to anyone herself, neither [sic] verbally nor in writing, that she was an LPR [lawful permanent resident] or a United States citizen . . ." Nevertheless, counsel acknowledges that the applicant paid a person to help her enter the United States illegally, and that the "[a]pplicant believed the documentation shown on her behalf was a false alien registration card . . ." The fact that the applicant admittedly paid someone to utilize documents she believed to be fraudulent qualifies as a willful misrepresentation of a material fact, which the applicant perpetrated in order to procure admission into the United States. Hence, the applicant is indeed subject to the instant grounds of inadmissibility.

Counsel in the most recent submission on motion also claims that director failed to properly consider all the hardship factors present in this case. However, the record reflects that the district director and the AAO analyzed all the evidence presented, in light of pertinent case law, relating to the hardship factors that would affect the applicant's husband. Thus, other than the contention that the applicant is not subject to § 212(a)(6)(C) of the Act, counsel does not point out any specific legal or factual errors present in the district director's or the AAO's decisions.

Returning to the applicant's April 22, 2003 motion through the latter wrote that the AAO erred in finding that the applicant's husband's knee surgery was elective. It is unclear from the applicant's more recent submission whether her husband underwent the proposed surgery, although had claimed that the surgery was necessary to preserve the applicant's husband's knee function.

The medical documentation on the record contains a notation by written on July 10, 2002, regarding his follow-up with the applicant's husband after his left knee arthroscopy. wrote that the applicant had returned to sports activities, including soccer, and that he experienced no pain in his left knee joint. further stated that the applicant's husband might undergo reconstruction, "if his symptoms are severe enough and he wants to get it done." Thus, the medical evidence on the record does not indicate that the applicant was barely functioning or that the surgery was imminently necessary, as Mr. suggested. The AAO finds that the previous characterization of the potential surgery as elective was correct.

The only factual discrepancy present in the AAO's dismissal of the appeal was due to the applicant's own submission of conflicting information. The AAO referred to the applicant's husband's ankle, rather than knee, surgery. In the original appeal, however, although the applicant submitted the same medical report that counsel resubmits on motion, referring to knee surgury, the applicant's husband wrote in his declaration that he had undergone surgery on one ankle and was due to have surgery on the other ankle. The applicant herself thus created this inconsistency. Since the AAO based its determination regarding the severity of the applicant's husband's physical problems on the medical documentation, however, the analysis was correct.

Hence, the AAO finds that its previous characterization of the severity of the applicant's husband's physical condition was correct. As this was the only matter raised by either upon which a motion to reconsider could be based, the previous decisions need not be disturbed. The director correctly determined that the applicant failed to show that her U.S. citizen spouse would suffer extreme hardship if she were removed from the United States, and the AAO did not err in its dismissal of the appeal.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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 dismissing the appeal is affirmed.