U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: OCT 3 0 2013 OFFICE: BANGKOK FILE: [redacted]

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Michael Shumway

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Bangkok, Thailand. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion is dismissed.

The applicant is a native of China and citizen of Taiwan who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation.[1] The applicant seeks a waiver of inadmissibility in order to remain in the United States with her U.S. citizen and lawful permanent resident daughters.

On June 29, 2012, the Field Office Director concluded that the applicant failed to demonstrate the existence of a qualifying relative in the context of her 212(i) waiver application and denied the application accordingly. The applicant, through counsel, timely appealed that decision and the appeal was dismissed by the AAO on May 21, 2013. The applicant has filed a motion to reconsider the AAO dismissal.

On motion, the applicant again asserts that she is not inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act because she did not make a material or willful misrepresentation in order to procure an immigration benefit. In support of that motion, the record includes a statement from the applicant's daughter, in addition to documentation previously submitted.

A motion to reopen must state the new facts to be proved 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 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 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, the applicant does not contest her inadmissibility under Section 212(a)(2)(A) of the Act as a result of her conviction for fraud in Taiwan on April 24, 1987.

The applicant was also found to be inadmissible under section 212(a)(6)(C) of the Act as a result of her failure to disclose that she had been charged, arrested, or convicted of any offense or crime on multiple visa applications and during her visa interviews, a finding which the applicant disputes

[1] The field office director also found the applicant to be inadmissible to the United States for alien smuggling pursuant to section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E). The field office director determined that the applicant brought her daughter into the United States as a nonimmigrant, though she was actually an intending immigrant. However, the AAO finds that the record is not clear concerning this charge of inadmissibility. The applicant and the applicant's daughter both assert that the applicant's daughter entered the United States on vacation and afterwards decided to remain. Regardless, the field office director, in her decision, determined that the applicant is eligible for a section 212(d)(11) waiver for this ground of inadmissibility.

on motion. On motion, the applicant's U.S. citizen daughter asserts that the applicant did not make a willful misrepresentation because she did not intend to misrepresent her criminal record on her visa applications and in her consular interview. The applicant's daughter again asserts that the applicant believed that her record was clear and obtained a record from the Police Department showing that she has no record of conviction in The applicant's daughter also states that her mother believed that her involvement in the case was as a witness to proceedings against her husband and that she was not a defendant, a belief that she says was confirmed by the lack of notation on the Certificate concerning the conviction.

The record, however, continues to support the finding of inadmissibility under section 212(a)(6)(C) of the Act. The same assertions made on motion were made on appeal and are asserted again without more than a supporting affidavit from the applicant's daughter. Although the applicant continues to maintain that she was unaware of her conviction, the record contains a criminal judgment against the applicant, dated April 24, 1987. The record does not support the applicant and her daughter's statement that the applicant was merely a witness in the criminal fraud proceedings. The record also does not support the applicant's assertion that she was told in her 1998 consular interview that the criminal record and judgment requested at that time only involved her husband. The burden of proof is on the applicant. *See* section 291 of the Act. The record indicates that the applicant was indicted for fraud by the Prosecutors Office of Branch of District Court and ruled not guilty after trial. After a subsequent prosecutor's appeal, the prior judgment of not guilty was revoked by the Taiwan High Court and both the applicant and her business partner husband were subsequently convicted and sentenced. Based upon the facts in the record indicating the procedural history of the applicant's criminal case, it is clear that the applicant was both charged and convicted of the crime of fraud and the applicant willfully misrepresented her criminal history in stating that she had never been arrested, charged, or convicted of any crime or offense.

The applicant's misrepresentation concerning her fraud conviction, a conviction involving moral turpitude requiring a waiver of inadmissibility, is a material misrepresentation. There is insufficient basis on motion to disturb our previous finding that the applicant's misrepresentation concerning her criminal record was both willful and material. As a result, the applicant has not established that the AAO's decision was incorrect, and she remains inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant has not established that she has a qualifying relative whose hardship may serve as a basis for eligibility for a waiver under sections 212(i) of the Act. As the applicant has not established that she has a qualifying family member for the 212(i) waiver, no purpose would be served in determining whether the applicant merits a waiver under section 212(h) of the Act or as a matter of discretion.

In application proceedings, 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 motion will be dismissed.

ORDER: The motion is dismissed.