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



H5

DATE: APR 25 2012

OFFICE: LOS ANGELES, CA

FILE: [REDACTED]

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 PETITIONER:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Inadmissibility (Form I-601) was denied by the District Director, Los Angeles, California, and an appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be dismissed, and the previous AAO decision and order, dated August 3, 2009, will be affirmed.

The applicant is a native and citizen of South Korea who was found to be inadmissible 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 attempting to procure admission into the United States by fraud or willfully misrepresenting a material fact. The applicant is married to a lawful permanent resident, and she seeks a waiver of her inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that she may live in the United States with her spouse.

In a decision dated January 31, 2007, the director determined the applicant had failed to establish that her spouse would experience extreme hardship if the applicant were denied admission into the United States. The Form I-601 was denied accordingly. The AAO dismissed an appeal of the decision on August 3, 2009, finding that the applicant had failed to establish her husband would experience extreme hardship if she were denied admission. In the present motion to reopen, counsel asserts that new evidence establishes, in combination with originally submitted documentation, that the applicant's husband will experience extreme physical, emotional and financial hardship if the applicant is denied admission into the United States. In support of his assertions, counsel provides previously un-submitted medical documentation. Counsel also resubmits letters from the applicant and family members, and a psychological evaluation that was previously submitted on appeal.

The regulations state in pertinent part at 8 C.F.R. § 103.5(a):

(a) Motions to reopen or reconsider

.....
(2) Requirements for motion to reopen. 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.

.....
(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

Counsel states on motion that the applicant's husband's health is deteriorating, that he has suffered a stroke, and that he has insomnia, loss of appetite, chronic pain, and must take medication. Counsel states the applicant's husband's medical condition has affected his ability to work and that he cannot provide financially and physically for himself and his family without the applicant's support. It is noted that the above assertions were made on initial appeal. Counsel states on motion, however, that previously un-submitted medical evidence further establishes the extreme hardship the applicant's husband will suffer if the applicant's waiver application is denied.

The medical evidence submitted on motion includes a statement of acupuncture services provided to the applicant's husband between 2005 and 2008, to treat back pain; diagnostic testing laboratory results from February 2007; and a hand-written medical report reflecting that the applicant's husband has fibromyalgia and leukocytosis, and that he has been prescribed medication.¹ The remainder of the evidence submitted on motion consists of documentation that was previously provided and addressed by the AAO on appeal.

The AAO finds that the medical evidence submitted on motion fails to establish, either on its own, or in combination with previously submitted evidence, that the applicant's husband would suffer extreme physical, emotional or financial hardship if the applicant were denied admission into the U.S., and he remained in the country, or he relocated to South Korea in order to be with her. The medical records do not mention the applicant, or her husband's need for assistance from her, and the evidence does not address or establish that the applicant's husband's ability to work has been affected by his condition. The evidence also fails to establish that the applicant's husband's health is deteriorating, or that he would be unable to provide for himself and his family without the applicant's assistance. The medical evidence is general and does not contain an explanation of the nature and severity of the applicant's husband's health conditions, and the evidence does not address or demonstrate that the applicant's husband's health would be affected if he remained in the U.S. without the applicant, or if he moved to South Korea in order to be with the applicant.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. §1361. In the present matter, the new evidence does not overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO, dated August 3, 2009, will be affirmed.

ORDER: The motion to reopen is dismissed. The AAO decision and order dated August 3, 2009 is affirmed.

¹ The medical report contains other information that is illegible and thus cannot be considered.