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

(b)(6)

U.S. Citizenship and Immigration Services

Date: MAR 25 2013 Office: PHOENIX, ARIZONA FILE:

IN RE: Applicant:

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:

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

In a decision dated June 28, 2010, the AAO determined that the applicant was inadmissible under section 212(a)(6)(C) of the Act for procuring admission into the United States based on willful misrepresentation and failed to demonstrate extreme hardship to a qualifying relative, as required for a section 212(i) waiver. In addition, the AAO determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(II) of the Act for violation of a state law relating to a controlled substance (conviction of possession or use of marijuana), and failed to establish eligibility to apply for a section 212(h) waiver.

In the motion dated July 28, 2010, counsel argues that the applicant's wife would experience extreme hardship if she were to relocate to Jamaica. Counsel asserts that in Jamaica the applicant's wife and son "will not be able to obtain the same healthcare that she has in the United States . . . Jamaica does not have hospitals that provide medical attention. The harsh reality is the quality and readily available care." Counsel contends that prescription drugs "are not easily obtained." Counsel asserts that the applicant's wife "will not be able to afford medical insurance nor cover the costs if her or her son needs immediate medical attention." Counsel declares that "[t]he likelihood of finding a job in Jamaica is little to none" and that the Ministry of Labor and Social Security is seeking job opportunities for Jamaican citizens to work abroad and that Canada has opportunities for licensed practical nurses to move and work in Canada. Counsel contends that in relocating to Jamaica the applicant's wife will be living in a slum in and "would have to reside [in] conditions where women and children are often killed." Counsel declares that a gang leader was arrested after people were killed during an assault by police and soldiers in Counsel asserts that "[w]ith these daily worries, it will be nearly impossible for to continue her education."

A motion to reconsider must establish that the decision was based on an incorrect application of law or Service policy. *See* 8 C.F.R. § 103.5(a)(3). A motion to reopen must state new facts. *See* 8 C.F.R. § 103.5(a)(2). As to reconsideration, counsel makes no new arguments asserting that the AAO's decision regarding inadmissibility and hardship was based on an incorrect application of law or Service Policy. As to reopening, counsel provides new evidence –a U.S. Department of State report on Jamaica; a ranking of health systems from the World Health Organization; a release about a job fair for local nurses, a newspaper column about a newspaper article about the capture of a drug lord; a blog about moving to Jamaica; an article about health care in Jamaica, and information becoming a Jamaican citizen through marriage.

The AAO found the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for seeking admission into the United States by fraud or willful misrepresentation.

However, in the June 28, 2010 decision the AAO also determined the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for violation of a state law relating to a controlled substance (conviction of possession or use of marijuana), and has not established eligibility to apply for a section 212(h) waiver. Counsel makes no new arguments and provides no new evidence regarding this ground of inadmissibility. The applicant has the burden of demonstrating that he is not inadmissible, and if inadmissible, the burden of demonstrating eligibility for a waiver of inadmissibility. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 103.2(b). *See also Young v. Holder*, 697 F.3d 976, 979-983 (9th Cir. 2012) (when the burden rests on the alien to show eligibility for cancellation of removal, an inconclusive record is insufficient to satisfy the alien's burden of proof). Thus, the applicant remains inadmissible under section 212(a)(2)(A)(i)(II) of the Act. As this inadmissibility makes the applicant ineligible for adjustment, no purpose is served in addressing eligibility for a waiver under section 212(i). Consequently, by not addressing this inadmissibility, the applicant has failed to show that the AAO's decision to dismiss his appeal was based on an incorrect application of law or Service policy.

In addition, further review of the record reflects that the applicant is also inadmissible to the United States pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for having reentered the United States after having previously been removed. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office or service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a de novo basis).

Section 212(a)(9)(C) of the Act states:

> (C) Aliens unlawfully present after previous immigration violations
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> (i) In general
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> Any alien who--
>
> (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
>
> (II) has been ordered removed under section 1225(b)(1) of this title, section 1229a of this title, or any other provision of law,
>
> and who enters or attempts to reenter the United States without being admitted is inadmissible.
>
> (ii) Exception

> Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.
>
> . . .

The Notice to Alien Ordered Removed/Departure Verification shows that the applicant was removed from the United States on July 19, 1999 and was inadmissible for a period of five years from the date of the departure. The record of sworn statement dated July 27, 2009 reflects that the applicant stated that he entered the United States in 2001 claiming to be . When the applicant, after his removal on July 19, 1999, subsequently reentered the United States in 2001 claiming to be he became subject to the permanent bar of section 212(a)(9)(C)(i)(II) of the Act.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006); *Matter of Briones,* 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez,* 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States *and* U.S. Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on July 19, 1999 and he reentered the United States in 2001. As the applicant has not remained outside the United States for ten years, he is currently statutorily ineligible to apply for permission to reapply for admission. Accordingly, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C) of the Act.

In sum, the applicant has failed to demonstrate that the AAO's decision confirming inadmissibility under 212(a)(2)(A)(i)(II) of the Act for having a controlled substance conviction was in error. Accordingly, the applicant has not demonstrated that the decision dismissing his appeal was in error. As stated, we also find that the applicant is permanently inadmissible under section 212(a)(9)(C)(i)(II) of the Act for his subsequent reentry into the United States in 2001 after having been expeditiously removed on July 19, 1999.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed.