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U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Rm. A3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

tlr

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO, CA

Date: AUG 04 2006

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, California and an appeal of that decision was dismissed by the then Associate Commissioner for Examinations. The Associate Commissioner subsequently dismissed three motions to reconsider. The application is now before the Administrative Appeals Office (AAO) on a fourth motion to reconsider. The motion will be dismissed and the previous decisions of the district director and the AAO will be affirmed. The application will be denied.

The applicant is a native and citizen of India who was determined 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 having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). She 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 and children.

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 August 4, 2000. The decision of the district director was affirmed by the AAO on appeal. *See AAO Decision*, dated November 15, 2000. Three motions to reconsider were subsequently dismissed by the AAO. *See AAO Decisions*, dated June 18, 2001, November 6, 2001, and November 6, 2002, respectively.

On fourth motion to reopen and reconsider, counsel restates his arguments that the district director erred in denying the waiver request because the applicant was unaware of her misrepresentation in procuring admission into the United States and that the applicant's spouse and children would suffer hardship if the applicant departs from the United States. *Letter from Randhir S. Kang, Esq.*, dated November 27, 2002. In support of his assertions, counsel submits a copy of *Virk v. INS*, 295 F.3d 1055 (9th Cir. 2002). The entire record was reviewed and considered in rendering a decision on the applicant's motion to reopen.

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.

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.

On fourth motion to reopen and reconsider, counsel submits a copy of *Virk v. INS*, 295 F.3d 1055 (9th Cir. 2002) to support the proposition that positive factors presented in the application need to be considered in adjudicating the Form I-601 waiver application. *Letter from Randhir S. Kang, Esq.* (“The Court further held that the BIA’s opinion does not reflect a consideration of any of the factors weighing in favor of granting Virk the waiver.”). Counsel further cites *Matter of Da Lomba*, 16 I&N Dec. 616 (BIA 1978). *Letter from Randhir S. Kang, Esq.* (“[The] BIA in this matter alleges that the intent of Congress in enacting section 241(f) was humanitarian [sic] desire to unite families and preserve family ties.”). The AAO acknowledges counsel’s assertions, but finds that the evidence of hardship previously presented by the applicant was considered and discussed in the opinions rendered by the district director and the AAO. The previous decisions did not reach a weighing of the favorable and unfavorable factors in order to determine whether an exercise of the Attorney General’s [now Secretary’s] discretion was warranted because adjudication determined that the requisite level of extreme hardship was not established.

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 decisions of the district director and the AAO were based on an incorrect application of law or Citizenship and Immigration Services policy.

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 dismissed. The decision of November 15, 2000 dismissing the appeal is affirmed and the application is denied.