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

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: HONOLULU Date: SEP 2 1 2009

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:

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 law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Honolulu, Hawaii and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A motion to reconsider was granted and the previous decisions of the district director and the AAO were affirmed. The matter is again before the AAO on a motion to reconsider. The motion will be granted, and the previous decisions of the district director and the AAO will be re-affirmed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States 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 having procured admission into the United States, in October 1994, by fraud and/or willful misrepresentation.[1] The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) to reside in the United States with his U.S. citizen spouse and child.

The district director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated September 29, 1998.

On appeal, the AAO concurred with the district director that extreme hardship to a qualifying relative had not been established, as required by section 212(i) of the Act. Consequently, the appeal was dismissed. *Decision of the AAO,* dated June 21, 1999.

On July 14, 1999, counsel for the applicant filed a motion to reconsider, contending that extreme hardship to the applicant's U.S. citizen spouse and child had not been properly considered and thus, the law was inappropriately applied to the case. *See Motion for Reconsideration,* dated July 12, 1999.

On motion, the AAO concluded that the applicant had failed to show that his qualifying relative would suffer extreme hardship over and above the normal economic, emotional and social disruptions involved in the removal of a family member. The AAO further noted that even if extreme hardship had been found, the unfavorable factors in the matter outweighed the favorable ones. Consequently, the decision of the district director was affirmed. *See Decision of the AAO,* dated March 7, 2001.

On April 5, 2001, counsel for the applicant submitted a second motion to reconsider, asserting that the AAO had "inappropriately applied the after acquired equities analysis by matching Respondent's request for a waiver based upon extreme hardship to his spouse to case decision which were made as a result of a respondent requesting an after acquired equity after being placed in deportation proceeding.... Another circumstance in this case is that the Service did not consider all the equities

[1] The record reflects that the applicant obtained admission to the United States in 1994 using a fraudulent immigrant visa that was procured by his sister for about $8,000.00. *Transcript of Q & A Statement,* dated October 30, 1997.

in this case in making its decision...." *See Motion to Reconsider,* dated April 5, 2001.[2] The entire record was reviewed and considered in rendering this 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.
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> . . . .
>
> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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.

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. In the present case, the applicant's spouse is the only qualifying relative to be considered[3], and hardship to the applicant and/or their child cannot be considered, except as it may affect the applicant's spouse.

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[2] Counsel further notes that "the Service did not properly take into account that Respondent's life is in danger, which would undoubtedly cause a great hardship to the qualifying relative...." *Supra* at 4. The AAO addressed this claim on appeal, and on motion, concluding that said assertion was unsupported by the record. As no supplemental documentation to support this claim has been provided with the instant motion, there is no need for the AAO to re-address this issue at this time. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

[3] Although the record establishes that the applicant's parents are qualifying relatives for purposes of section 212(i) of the Act, as they are lawful permanent residents of the United States, the AAO notes that no evidence of what, if any,

The AAO notes that section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Only if extreme hardship is established must the USCIS assess whether to exercise discretion.

The AAO's decision, dated March 7, 2001, discussed at length the documentation provided by the applicant and concluded that extreme hardship to a qualifying relative was not established by the applicant. The discretionary balancing of positive and negative factors analysis conducted by the AAO in said decision was provided to the applicant to emphasize the fact that even if the AAO had found that extreme hardship to a qualifying relative existed pursuant to section 212(i) of the Act, the applicant would remain ineligible for a waiver as a matter of discretion, as the unfavorable factors outweigh the favorable ones.

In the instant motion, counsel asserts that an inappropriate standard was applied in relation to the discretionary analysis of positive and negative factors conducted by the AAO. However, as noted above, said issue is moot, as extreme hardship to a qualifying relative was not established.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to establish that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has not been established that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant. Accordingly, the AAO finds that the situation presented in this application does not rise to the level of extreme hardship. Thus, the arguments presented in the instant motion to reconsider are moot, as extreme hardship to a qualifying relative has not been established and thus, the analysis of the discretionary balancing of positive and negative factors is not necessary and shall not be conducted.

In proceedings for application for waiver of ground of inadmissibility under sections 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the decisions of the district director and the AAO will be re-affirmed.

ORDER: The motion will be granted and the previous decisions of the director and the AAO will be re-affirmed.

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hardships they would face were the applicant to relocate abroad due to his inadmissibility has been provided. As such, hardship to the applicant's parents can not be considered at this time.