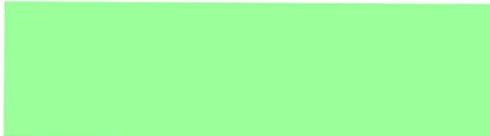


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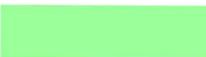


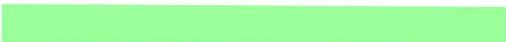
U.S. Citizenship
and Immigration
Services



Date: FEB 27 2013

Office: PHILADELPHIA, PA

FILE: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:



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 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,

A handwritten signature in cursive script that reads "Michael Shumway".

f/ Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia. 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 and the underlying application will remain denied.

The record reflects that the applicant is a native of Ireland and a citizen of Ireland and the United Kingdom. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), for seeking admission into the United States by fraud or willful misrepresentation; and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude.

The field office director indicated that the applicant sought waivers of inadmissibility under sections 212(h) and 212(i) of the Act, 8 U.S.C. §§ 1182(i) and 1182(h), respectively. The field office 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. The field office director also stated that, even had the applicant demonstrated extreme hardship, the “repeated instances of fraud and willful misrepresentation in efforts to gain immigration benefits speaks very strongly against . . . a waiver of statutory grounds of inadmissibility” as a matter of discretion.

In a decision dated August 15, 2011, the AAO found the applicant was inadmissible under section 212(a)(6)(C) of the Act for seeking admission into the United States by fraud or willful misrepresentation, and section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. In addition, the AAO determined that the applicant established extreme hardship to his wife if she remained in the United States without him, but failed to establish extreme hardship if she joins him to live in England. Furthermore, we concluded that even if extreme hardship had been established to a qualifying relative under section 212(h) of the Act, the waiver application should be denied in the exercise of discretion.

On motion, counsel contends that the AAO erred in concluding that the applicant made willful misrepresentations on five occasions. Counsel argues that the applicant made a truthful sworn statement in March 2007 admitting to an unsuccessful attempt to enter the United States on February 3, 2000 using his British passport, to a successful entry to the United States “in March or April” of 2000 using his Irish passport, and to his misrepresentation of failing to disclose a prior denial of entry. Counsel contends that the new evidence of the doctor’s letter, medical records, and affidavit from the applicant’s wife shows the applicant’s wife’s depression has worsened and that she has serious distress due to denial of the waiver application. Counsel argues that the applicant’s convictions occurred in 1975, the applicant has been sober for 16 years and volunteers at Alcoholics Anonymous meetings, and is needed by his wife. Counsel asserts that the AAO stated that the applicant’s spouse would experience extreme hardship if the applicant left the United States, but wrongly determined the adverse factors outweigh the favorable factors in the discretionary analysis.

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 that the AAO's decision was based on an incorrect application of law or Service policy. Counsel contends that the AAO erred in determining that the applicant made willful misrepresentations on five occasions, but fails to consider that the applicant's intentional misrepresentations were (1) his use of a British passport in the name [REDACTED] in an attempt to gain admission into the United States on February 3, 2000; (2) his failure to disclose his criminal history and denial of admission to the United States on February 3, 2000 in the Form I-94W, Visa Waiver Arrival Record, filed on March 2, 2000, as well as his seeking admission into the United States on March 25, 2000 using an Irish passport in the name [REDACTED] (3) his failure to disclose his criminal history in the Form I-485, Application to Register Permanent Residence or Adjust Status, filed on July 7, 2001; (4) his failure to disclose his crimes in the Form I-485 filed on December 19, 2005; and (5) his failure to disclose his prior denial of admission in the Form I-94W when he sought admission on March 20, 2007.

As to reopening, counsel provides evidence consisting of a doctor's letter, medical records, and affidavit from the applicant's wife. The doctor's letter dated September 9, 2011 states that the applicant's wife was admitted to the state hospital for alcohol abuse and for evaluation for depression, and was diagnosed with mood disorder, alcohol abuse and depression, and hypertension. Medical records reflect the applicant's wife has physical as well as mental health problems. The applicant's wife asserts in the undated affidavit that she has depression and high blood pressure, and is the caregiver for her 81-year-old mother. She states that she was hospitalized recently because things became overwhelming for her. She commends the applicant's character, and his sobriety and assisting others to become sober. The applicant's wife asserts that they own a house and share the mortgage and other costs.

Upon review of this evidence, we find that the evidence is new, but does not warrant the reopening of the applicant's case for the reasons set forth in this decision.

In the decision dated August 15, 2011, the AAO determined that the applicant established extreme hardship to his wife if she remained in the United States while the applicant lived in England, but made no claim and presented no evidence of extreme hardship to his wife if she joins him to live in England. We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). On motion, the applicant has not provided any evidence or any claims of hardship to his wife if she joins him to live in England, and we find nothing in the evidence submitted that would materially affect our decision in that regard. As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing the AAO's determination that the waiver application should be denied in the exercise of discretion.

(b)(6)

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In sum, the motion to reopen and reconsider will be denied and the underlying application remains denied.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

ORDER: The motion is dismissed. The underlying application remains denied.