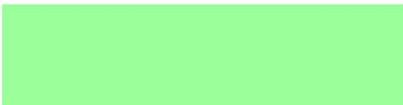




U.S. Citizenship  
and Immigration  
Services

(b)(6)

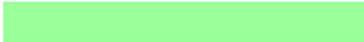


Date: **OCT 08 2013**

Office: SACRAMENTO

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 (i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Sacramento, California. 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 granted and the prior AAO decision will be affirmed.

The applicant is a citizen and national of Morocco who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of crimes involving moral turpitude and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or willful misrepresentation of a material fact. The applicant is married to a U.S. citizen. He seeks waivers of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. § 1182(h) and (i), in order to remain in the United States with his U.S. citizen spouse.

In a decision dated July 31, 2012, the Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. The applicant timely appealed that decision and the appeal was dismissed by the AAO on May 28, 2013.

The applicant filed an appeal of the AAO decision, including additional letters in support of his application, but did not provide any legal basis to challenge the prior AAO decision. The appeal will be taken as a 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. 8 C.F.R. § 103.5(a)(2). 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 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The applicant has provided new documentation in support of his appeal. The application will be reopened, but the appeal ultimately remains dismissed as set forth below.

The applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude, which included two convictions in the Criminal Chamber of the Court of Appeal of Rabat, Morocco for writing bad checks (not paying a check when the payment was due) in violation of article 316 of the Commerce Code of Morocco. On motion, the applicant explains the circumstances of his convictions and states the convictions were the result of a corrupt and unfair system in Morocco. In general, the AAO cannot go beyond the record of conviction to re-litigate guilt and innocence, and the applicant provided no documentation in support of his assertion. Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is on the applicant to establish that he is not inadmissible or, if inadmissible, that he is eligible for a waiver of that inadmissibility and should be granted the waiver as a matter of discretion. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972)

(“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part, that:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

. . .

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The applicant is also inadmissible for under section 212(a)(6)(C) of the Act for seeking admission into the United States by fraud or willful misrepresentation of a material fact. On motion, the applicant states that he did not believe that he needed to disclose his arrests and criminal history in Morocco on Form I-485, as he was under the impression that his criminal history was known and that the Form-I-485 only referred to criminal history in the United States.

In regards to the willfulness of the applicant's stated misrepresentations, 9 FAM 40.63 N5.1, in pertinent part, states that:

The term “willfully” as used in section 212(a)(6)(C)(i) of the Act is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately made an untrue statement.

Although the AAO is not bound by the Foreign Affairs Manual, it finds its interpretation persuasive. As noted in our previous decision, the applicant signed his I-485 application on July 13, 2010, acknowledging his responsibility for the contents of that application. Therefore, the record conveys that the applicant willfully failed to disclose in the Form I-485 the material fact of his criminal convictions, which render the applicant inadmissible to the United States. Additionally, the Summary of Findings report of a USCIS site visit on August 19, 2011 reflects that the applicant admitted to Immigration Officer [REDACTED] that he willfully withheld information regarding his criminal convictions. The AAO finds that to the extent that the applicant claims that his misrepresentation concerning his criminal history was not willful, this contention lacks merit. Again, the burden of proof is on the applicant to establish by a preponderance of the evidence that he is not inadmissible. *See* section 291 of the Act; *see also* *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978).

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

- (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 waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's U.S. citizen spouse is the qualifying relative in these proceedings. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

In our previous decision we found that the applicant failed to establish extreme hardship to his qualifying relative both in the event that the qualifying relative was separated from the applicant and if she were to relocate to Morocco to reside with the applicant. On motion, the applicant provides two additional letters, one from himself and one from his spouse, to document the hardship to his qualifying relative. In regards to the hardship that the applicant's spouse would suffer if she were to be separated from the applicant, the applicant states that his spouse is in ill health and is struggling with her work. The applicant's spouse, in her letter, also states that she has had medical problems and that her health will grow more fragile as she grows older. She also states that the depression and stress of losing the applicant's physical presence could cause her more illness. No new documentation was submitted in support of these statements. Previously the AAO acknowledged that the applicant's wife experienced a mental health episode and sustained an injury on her left leg. However, we found that the evidence regarding the applicant's spouse's medical and psychological conditions did not demonstrate more than the common hardship associated with inadmissibility or removal. No evidence has been submitted that would change that determination. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The evidence on the record is insufficient to establish that the applicant's spouse suffers from a condition that is affected in any way by the applicant's inadmissibility. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. The AAO recognizes the impact of separation on families, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case as a result of the applicant's spouse's separation from the applicant is extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

In addition, the new letters submitted on motion fail to change our previous determination regarding the hardship that the applicant's spouse would suffer were she to relocate to Morocco with the applicant. The applicant's spouse again reiterates that relocation to Morocco would cause her loss of her faith, ability to communicate in English, loss of income, and would result in her separation from her daughters, grandsons, sisters and brothers. She further states that the financial assistance that she provides to her daughters would be lost. The AAO notes that hardship to the applicant's stepdaughters is only relevant insofar as it is shown to cause hardship to the qualifying relative. Additionally, although the applicant's spouse's statements have been taken into account, she has not provided any documentation to support her assertions that she would be unable to practice her faith or would suffer emotional hardship and isolation due to her inability to speak Arabic or French. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The AAO acknowledges that the applicant's wife is a United States citizen and that record evidence suggests she has resided in the United States her entire life. Additionally, the AAO acknowledges that the applicant's spouse's immediate family members, including her daughters and grandchildren, reside in the United States. However, the applicant has not shown that her relocation to Morocco, or separation from her daughters and grandchildren, would elevate her hardship to an extreme level. Furthermore, the record does not establish that the applicant's wife would be unable to obtain employment upon relocation to Morocco that would allow her to continue to practice as a nurse. The applicant has not submitted any new evidence on motion aside from his and his spouse's statements. Accordingly, we do not find a reason to change our determination that the evidence of record, considered in the aggregate, does not show that relocation to Morocco would cause extreme hardship to the applicant's spouse. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66.

Based on the foregoing, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish that the applicant's qualifying relative would experience hardship that rises beyond the common results of removal or inadmissibility. The documentation in the record therefore fails to establish the existence of extreme hardship to the applicant's spouse as a result of the applicant's inadmissibility to the United States, as required under 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The prior decision of the AAO is affirmed.