

(b)(6)



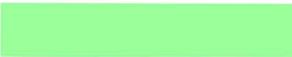
U.S. Citizenship  
and Immigration  
Services



Date: **MAR 19 2014**

Office: CHICAGO

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 (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 black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). A motion to reopen and reconsider was granted by the AAO, and the AAO affirmed its previous decision. A second motion to reopen and reconsider was granted by the AAO, and the AAO again affirmed its previous decision. The matter is again before the AAO on a motion. The motion will be dismissed.

The applicant is a native and citizen of Poland who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant's spouse and two stepchildren are U.S. citizens, and his child is a lawful permanent resident. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The Field Office Director concluded that the applicant had failed to establish eligibility for a section 212(h) waiver and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 12, 2007.

The AAO, reviewing the applicant's Form I-601 on appeal, also found the applicant to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The AAO found that the record established that the applicant was arrested in Poland on March 26, 1996 and convicted on October 21, 2002 of several offenses, including obtaining bank loans under false pretenses.<sup>1</sup> However, on his October 22, 2002 nonimmigrant visa application, the applicant indicated that he had never been arrested or convicted of any crime. As such, the applicant is also inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, for willfully misrepresenting a material fact in order to procure a visa to the United States. *Decision of the AAO*, dated May 18, 2010.

Although the applicant is inadmissible under both section 212(a)(2)(A)(i)(I) and section 212(a)(6)(C)(i) of the Act, the AAO will not consider the applicant's eligibility for a waiver under section 212(h) of the Act, as the applicant also must satisfy the more restrictive requirements of section 212(i). Establishing extreme hardship under section 212(i) of the Act will also satisfy the requirements for a waiver of inadmissibility under section 212(h) of the Act.

On June 17, 2010, the applicant, through counsel, filed a motion to reopen and reconsider the AAO's decision. The AAO granted the motion and affirmed its prior decision. *Decision of the AAO*, dated February 27, 2013. The applicant subsequently, through new counsel, filed a second motion to reopen the AAO's decision on March 18, 2013. The second motion was granted, and the AAO again affirmed its prior decision. *Decision of the AAO*, dated November 22, 2013.

In the current motion, counsel requests that the AAO reconsider its November 2013 decision, asserting that the AAO found the 2006 psychological evaluation of the applicant's qualifying relative insufficient because it is based on personal history and is not detailed in its analysis.

---

<sup>1</sup> Because the applicant was convicted of a crime involving fraud, the Field Office Director correctly found him to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude.

Counsel also asks the AAO to “take notice” that a psychological hardship claim made seven years ago “will become stronger [over] the years without additional evidence.” See *Form I-290B, Notice of Appeal or Motion (Form I-290B)*, dated December 17, 2013.

In its previous decision, in addition to finding that the psychological evaluation is largely a recounting of personal family histories, the AAO also found that the evaluation lacks the type of detailed psychological analysis that typically supports a mental-health diagnosis and that the evaluation is not the product of an ongoing treatment relationship. Counsel now asks the AAO to take notice, without providing new evidence, that the applicant’s spouse’s psychological condition has worsened in the seven years since the evaluation was prepared. Without new facts to support counsel’s claim, however, the AAO cannot assume that the applicant’s spouse’s condition has worsened solely because her psychological evaluation occurred seven years ago.

8 C.F.R. § 103.5(a)(3) states, in pertinent part:

*Requirements for motion to reconsider.* 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 policy.

Counsel’s statement on the Form I-290B fails to indicate that the AAO’s most recent decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. Moreover, counsel does not provide pertinent precedent decisions to support that premise.

8 C.F.R. § 103.5(a)(2) states, in pertinent part:

*Requirements for motion to reopen.* A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

Counsel states no new facts and provides no new evidence with this motion to show that as a result of the applicant’s inadmissibility, his qualifying relative would experience extreme hardship in the United States.<sup>2</sup>

8 C.F.R. § 103.5(a)(4) states, in pertinent part:

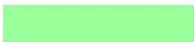
*Processing motions in proceedings before the Service.* A motion that does not meet applicable requirements shall be dismissed.

The AAO finds that the applicant has not established that the decision was based on an incorrect application of law or USCIS policy and has not provided new evidence to show extreme hardship to

---

<sup>2</sup> The AAO previously found the applicant established his spouse would experience extreme hardship upon relocation to Poland but not if she remained in the United States. *Decision of the AAO*, dated February 27, 2013.

(b)(6)



*NON-PRECEDENT DECISION*

Page 4

his qualifying relative. Because the motion does not meet the applicable requirements of either a motion to reconsider or a motion to reopen, it therefore is dismissed.

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 motion is dismissed.