



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **NOV 18 2014** Office: NEW YORK, NEW YORK

FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, New York, New York. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed by the AAO. The applicant filed a motion to reopen the AAO decision, which is now before the AAO. The motion will be dismissed.

The applicant is a native and a citizen of the Dominican Republic who was found 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 misrepresentation; section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for a prior period of unlawful presence; 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 a Crime Involving Moral Turpitude (CIMT). The applicant does not contest any of the grounds of inadmissibility. The applicant is married to a United States citizen and is seeking waivers under sections 212(i), 212(a)(9)(B)(v) and 212(h) of the Act in order to reside in the United States.

The Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 1, 2009. We found that the applicant had failed to establish a qualifying relative would experience extreme hardship and dismissed the appeal on March 9, 2012.

On motion, filed on or about April 2, 2012 and received by the AAO on August 5, 2014, counsel for the applicant asserts that, due to the applicant's psychological condition the applicant's spouse is severely affected, a factor that was previously unavailable and that should establish the applicant's spouse will experience extreme hardship due to the applicant's inadmissibility.

The record includes documentation that was previously submitted and considered on appeal by the AAO. On motion, the applicant submits one additional document, a one page letter from [REDACTED] regarding the applicant.

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: (1) 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 USCIS policy; and (2) 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).

The applicant and counsel previously asserted that the applicant's spouse would experience emotional and psychological hardship due to the applicant's inadmissibility. We discussed emotional and psychological hardship to the applicant's spouse in our decision dated March 9, 2012. On motion, counsel asserts that the applicant suffers from a depressive disorder and that the applicant's spouse will experience emotional and psychological hardship as a result of her condition. The one page statement that was submitted in support of counsel's assertions was based on an examination done on August 17, 2011. The statement speaks only in general terms and references "verbal abuse" to the applicant based on a "husband who was verbally abusive during the end of their relationship." It states that the applicant was experiencing "psychological stressors related to marriage and immigration status." An examination of the record indicates that the applicant was not

previously married, and that at the time of this evaluation, she was married to the petitioner and qualifying relative in this case. The statement makes no mention of any emotional or psychological hardship to the applicant's spouse, and instead indicates that the applicant's spouse is the source of her anxiety and depression. As the only evidence submitted on motion fails to discuss hardship to the applicant's spouse we cannot find that this evidence alters our hardship analysis in a manner favorable to the applicant.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i), 212(a)(9)(B)(v) and 212(h) of the Act of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion will be dismissed.

**ORDER:** The motion is dismissed.