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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

Hy

FILE: [REDACTED] Office: CHICAGO, IL

Date: **DEC 27 2010**

IN RE: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after  
Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and  
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

[REDACTED]

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** Field Office Director, Chicago, Illinois, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen and reconsider will be dismissed. The order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Cameroon who, on January 15, 2000, appeared at Dulles International Airport. The applicant presented her passport containing a U.S. nonimmigrant visa. The applicant stated that she was coming to the U.S. to attend her brother's wedding. The applicant was placed into secondary inspections. The applicant admitted that she had based her visa application on the premise that she was visiting the U.S. for her brother's wedding. The applicant admitted that she did not have a brother in the United States and had provided the name of her fiancé as her brother at the time she was interviewed for the visa. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for obtaining a visa and attempting to enter the United States by fraud and for being an immigrant without valid documentation. On January 28, 2000, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1).

On September 27, 2002, the applicant married her U.S. citizen spouse in Rockville, Maryland. On February 25, 2003, the applicant's U.S. citizen spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On March 12, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the Form I-130. During an interview in connection with the Form I-485, the applicant admitted that, on March 22, 2002, she had reentered the United States after having been removed by presenting a French passport bearing the name [REDACTED]." On December 11, 2003, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On January 12, 2004, the Form I-130 was approved. On January 22, 2004, the Form I-601 was denied. On January 22, 2004, the Form I-485 was denied because the applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) and the applicant had failed to establish that extreme hardship would be suffered by a qualifying relative. The applicant filed an appeal of the denial of the Form I-601 with this office. On February 27, 2004, the applicant filed the Form I-212. On February 29, 2008, this office dismissed the applicant's appeal of the denial of the Form I-601, finding that the applicant had failed to establish that extreme hardship would be suffered by a qualifying relative. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) and seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside in the United States with her U.S. citizen spouse and U.S. citizen child.

The field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision* dated March 10, 2009.

On appeal, counsel contended that the field office director erred as a matter of fact and law by failing to consider the applicant's U.S. citizen spouse's fear of returning to Cameroon based on persecution. *See Attachment to Form I-290B*, dated April 7, 2009. In support of her contentions, counsel

submitted only the referenced Form I-290B and attachment. On August 11, 2009, counsel supplemented the record by providing letters of recommendation.

On September 8, 2009, the AAO dismissed the applicant's appeal because she is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and had failed to establish that extreme hardship would be suffered by a qualifying relative. The AAO determined that, in a separate proceeding, the applicant's appeal of the denial of the Form I-601 had been dismissed and that no purpose would be served in adjudicating the Form I-212. *Decision of AAO*, dated September 8, 2009.

In the motion to reopen and reconsider, counsel contends that she was entitled to receive a copy of the decision because the applicant was represented by counsel. Counsel contends that extensive evidence in support of the applicant's appeal was filed with the Chicago field office which was not forwarded to the AAO. Counsel contends that the applicant provides a copy of the documentation not forwarded to the AAO and also files a copy of joint taxes from 2008 and updated personal information. Counsel contends that the applicant's husband will suffer extreme hardship and the applicant warrants a favorable exercise of discretion. *See Form I-290B*, dated October 7, 2009. In support of her motion to reopen and reconsider, counsel submits the referenced Form I-290B; copies of photographs; identity, health, criminal, psychological and financial documentation; country condition reports; and documentation already in the record. The entire record was reviewed in rendering a decision in this case.

The regulation at 8 C.F.R. § 103.5(a) provides, in pertinent part:

*(2) 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. A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

- a. The requested evidence was not material to the issue of eligibility;
- b. The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
- c. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

*(3) 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. 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.

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.

....

- (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.

Counsel, in her motion to reopen and reconsider, contends that she was entitled to receive a copy of the decision because the applicant was represented by counsel. Counsel contends that the AAO received a properly executed Form G-28 with a cover letter submitted on August 13, 2009. The AAO concedes that, although the Form G-28 submitted with the appeal was not properly executed, the Form G-28 submitted with the cover letter submitted to the AAO on August 13, 2009, was properly executed and that counsel was entitled to a copy of the AAO's decision; however, the AAO considered all the evidence and arguments properly brought before it by counsel and the fact that counsel did not receive a separate copy of the AAO's decision does not form the basis for a motion to reopen or reconsider.

In her motion to reopen or reconsider, counsel contends that the evidence she submitted to the Chicago field office was not properly forwarded to the AAO. As explained in the AAO's decision, the regulation at 8 C.F.R. § 103.3(a)(2)(viii) and the instructions to Form I-290B require the affected party to submit the brief or evidence directly to the AAO and not to the Chicago, Illinois field office or any other federal office. As discussed in its decision, the AAO found that even if counsel were to submit evidence that a brief and/or evidence was filed with an office other than the AAO, the AAO would not consider the brief and/or evidence on appeal because counsel failed to follow the regulations or the instructions for the proper filing location. Furthermore, as discussed below, the additional evidence and brief on appeal would not have altered the AAO's decision because the

applicant is otherwise mandatorily inadmissible. As such, counsel's contention does not form the basis of a motion to reopen or reconsider.

In her motion to reopen or reconsider, counsel contends that the applicant's husband will suffer extreme hardship and the applicant warrants a favorable exercise of discretion and submits copies of photographs, documentation and country condition reports to support her contentions; however, as discussed in the AAO's decision, in a separate proceeding, the interim district director, Baltimore, Maryland, found the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and ineligible for a waiver pursuant to section 212(i) of the Act. *See Interim District Director's Decision on Form I-601*, January 22, 2004. The AAO subsequently dismissed an appeal of the denial of the Form I-601. *See AAO's Decision on Form I-601*, dated February 29, 2008.

*Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964), held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. In that the interim district director and the AAO have found the applicant to be ineligible for a waiver of inadmissibility under section 212(i) of the Act, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As such, a motion to reopen or reconsider would only warrant reopening of an applicant's case if it is established that the applicant had timely filed and been granted a motion to reopen or reconsider the AAO's decision on the Form I-601. The AAO notes that the Form I-601 must be adjudicated prior to adjudication of the Form I-212.

After a careful review of the record, it is concluded that the applicant has failed to establish that the contentions submitted in the motion to reopen and reconsider meet the requirements of a motion to reopen and reconsider. Accordingly, the motion to reopen and reconsider is dismissed for failing to meet applicable requirements pursuant to 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion to reopen and reconsider is dismissed. The AAO's previous decision, dated September 8, 2009, is affirmed.