



U.S. Citizenship
and Immigration
Services

[REDACTED]

#5

DATE: Office: PITTSBURGH, PA FILE: [REDACTED]

IN RE: NOV 13 2012 Applicant: [REDACTED]

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

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 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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Pittsburgh, Pennsylvania. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted and previous decisions of the Field Office Director and AAO will be affirmed.

The applicant is a native and citizen of China. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having misrepresented material facts when applying for admission to the United States. He is married to a U.S. citizen, and has three U.S. citizen children. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 5, 2008. The AAO found that the applicant had failed to submit sufficient evidence to support a determination of extreme hardship, and that the evidence that had been submitted was not sufficient to corroborate counsel's specific assertions. *AAO Decision*, dated December 17, 2010. The AAO dismissed the appeal accordingly.

On motion, counsel for the applicant asserts that in the interim between the applicant's appeal and the AAO's decision, the applicant's spouse had an additional child, and submits two birth certificates and a tax return. *Form I-290B*, received January 14, 2011.

Section 212(a)(6)(C) of the Act states, in pertinent part:

- (i) In general. 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 chapter is inadmissible.

The record reflects that on February 22, 1995, the applicant attempted to enter the United States using a false identity. He applied for asylum, but his application was denied by an immigration judge on June 12, 1995, and his subsequent appeal was denied by Board of Immigration Appeals (BIA) on April 16, 1996. Accordingly, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission into the United States by willful misrepresentation.

Section 212(i) of the Act provides, in pertinent part:

- (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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The record contains the documents noted by the Chief on appeal, and two additional statements and a tax return submitted on motion. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In this case, counsel for the applicant asserts that in the interim between the appeal and subsequent AAO denial, the applicant's spouse had another child. The applicant has submitted a birth certificate to demonstrate the birth of a third child. Based on this evidence the AAO finds the applicant has met the criteria for a motion to reopen.

On motion, the applicant has submitted a tax return and two additional letters. The statements from the applicant's spouse repeats her prior assertions, and adds that her parents are unable to assist her because they live an hour and a half away from her home. The Chief previously addressed the applicant's contentions of hardships and concluded that the applicant had failed to submit sufficient evidence to establish extreme hardship and that the evidence that had been submitted was not sufficiently probative to corroborate her specific assertions. The additional evidence that has been submitted does not significantly alter the analysis of extreme hardship.

On motion, counsel, the applicant and the applicant's spouse address the Chief's conclusions with regard to specific facts asserted by the applicant's spouse, to wit, that the applicant's spouse did not have family members to assist her in the event of the applicant's departure and that the family-

owned restaurant would fail without the applicant operating as its cook. Although the applicant and his spouse have submitted additional affidavits restating their prior assertions and further attesting to the lack of family resources, no documentation has been provided to corroborate their explanations. Even if the applicant's spouse's statement were corroborated with documentation, the AAO does not find that proximity of the applicant's spouse's parents and sister would prevent them from assisting the applicant's spouse physically to mitigate the impact of the applicant's departure. Even in a light most favorable to the applicant, if it were demonstrated that she had no family to assist her and she would be unable to maintain the family business, the applicant has not shown that the consequences would constitute extreme hardship.

The additional undiscoverable fact submitted on motion concerns the applicant's having remained in the United States and having had an additional child. While the presence of an additional child is a consideration when assessing the impact of the applicant's departure, in this case there is insufficient evidence to corroborate the other assertions in the record. The AAO acknowledges that having to care for three children without the support of the applicant would result in additional hardship. However, the applicant has not submitted evidence which demonstrates that his spouse will experience other impacts rising above the common consequences of separation. The AAO is unable to conclude that she will experience extreme hardship based only on challenges related to her children.

When the hardships due to separation are considered in the aggregate, the AAO does not find the evidence in the record to establish that they rise above the common hardships to a level of extreme hardship. Although the AAO has re-opened the matter, it does not find the record to alter the final conclusion underlying Chief's decision and it will not disturb its prior decision.

On motion, counsel requests the AAO reconsider the applicant's denial. Although the applicant has submitted an additional fact for consideration, this does not demonstrate that the Field Office Director's Decision was based on an incorrect application of law or incorrect based on the evidence in the record at the time of the decision. The AAO does not find the motion to meet the criteria for reconsideration, and as such, the AAO will not reconsider the applicant's denial.

ORDER: The Motion to Reopen is granted. The prior decisions of the Field Office Director and the Chief, AAO, are affirmed. The application remains denied.