



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: APR 19 2013 Office: LOS ANGELES, CA

IN RE: Applicant:

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:

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,


Ron Reschke
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. 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 decision of the AAO will be affirmed.

The applicant is a native and citizen of the Philippines. She 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. She is married to a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 1, 2006. The applicant appealed but the AAO found that the applicant had failed to establish that a qualifying relative would experience extreme hardship due to the applicant's inadmissibility and dismissed the appeal accordingly. *AAO Decision*, dated April 9, 2009. The applicant submitted a motion to reopen which was also dismissed by the AAO on February 14, 2012. The applicant has now submitted another Form I-290B motion to reopen and reconsider.

On motion, counsel for the applicant asserts: 1) that the AAO's decision was in error because the applicant established extreme hardship to a qualifying relative; 2) that the AAO raised confusion between meeting the standards for a motion and establishing extreme hardship; 3) that the applicant never had a birth certificate in her name and denies that one exists; and 4) that because the applicant established that her spouse would experience extreme hardship upon relocation the applicant's waiver should be approved because the applicant insists he will have to relocate to the Philippines with the applicant. *Brief in Support of Motion*, received April 16, 2012.

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).

Counsel's assertion that the AAO decision was in error and raised confusion when determining whether the applicant's prior motion met the criteria for being granted. A filing must meet the criteria of a motion before the merits of a case can be reviewed. Here the AAO's cover page clearly explained that the applicant could file a motion and pointed to the regulations outlining how to do so. Counsel's assertion that the AAO created confusion is not persuasive and does not constitute a new fact to be established.

Counsel has also repeated the assertion that the applicant is not inadmissible for misrepresentation despite the fact that she has admitted that she entered the United States three times using someone else's passport. As previously noted, the record contains a copy of a birth certificate in the applicant's name, and in fact it is an exact replica of the document submitted on motion except that the name of the child is [REDACTED] and not [REDACTED]. Regardless of whether the applicant could get a copy of her own birth certificate or not, the applicant entered the United States using the passport of another person three times and has admitted to doing so. This was discussed previously and does not constitute a new fact to be discovered.

Counsel's assertion that the AAO should grant the applicant's waiver because the applicant's spouse would experience hardship upon relocation has no basis in law and does not constitute a new fact relevant to the hardship impacts on the applicant's spouse. The applicant's Form I-290B does not meet the requirements of a motion to reopen.

As a motion to reconsider, the AAO notes simply contesting the Chief's conclusions and repeating assertions of extreme hardship is not sufficient to warrant reconsideration. Counsel's assertion that the AAO should grant the applicant's waiver because a qualifying relative might experience extreme hardship upon relocation could be characterized as a policy argument, however counsel has not submitted any precedent cases which demonstrate that the AAO was not following established USCIS policy or that the decision was incorrect based on the record at the time of the decision.

The Form I-290B does not meet the criteria for a motion to reopen or reconsider, and as such will be dismissed.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion is dismissed.

ORDER: The motion is dismissed.