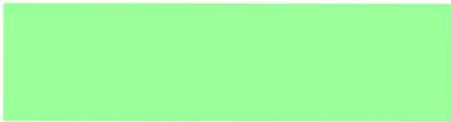




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 19 2013** Office: SAN BERNARDINO, CA

FILE:

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 Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Bernardino, 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 dismissed.

The applicant is a native and citizen of China. 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 Field Office 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 husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 12, 2010. The AAO found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the appeal. *AAO Decision*, July 20, 2012.

On motion, counsel for the applicant repeats the assertion that the applicant's former spouse committed fraud on his L-1 application and that the fraud should not be imputed to her, stating that she is not inadmissible pursuant to section 212(a)(6)(C) of the Act. *Form I-290B*, received August 17, 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).

On motion, counsel repeats the assertion that the applicant is not inadmissible due to misrepresentation, despite the fact that her former spouse may have committed fraud to obtain his L-1 visa. As discussed by the Chief in the AAO's prior decision, the applicant entered the United States with a false L-2 visa in July 1998, representing that she was the valid recipient of an L-2 visa based on her current husband's status. The applicant was not listed as a derivative on the underlying L-1 visa application, nor is there any indication that the applicant was married to the L-1 recipient at the time she claimed to have a valid L-2.

The Chief, AAO, addressed this assertion at length in his decision, and the AAO does not consider counsel's assertion to reveal or constitute a new fact to be proved. Counsel has not submitted any evidence to support his assertions, and has not cited any case law or other legal authority indicating that the AAO's decision was based on an incorrect application of law or USCIS policy.

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Based on the fact that the I-290B fails to meet the requirements of a motion to reopen or reconsider, the motion 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. The motion is denied.

ORDER: The motion is dismissed.