



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **AUG 05 2013** OFFICE: OAKLAND PARK, FL

[Redacted]

IN RE:

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 (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  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Oakland Park, FL, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be dismissed and the underlying application remains denied.

The applicant is a native and citizen of Panama who has resided in the United States since July 18, 2005, when he entered on a K-3 visa. He was later found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States in 1973 through fraud or misrepresentation, and for having filed a frivolous asylum application in 1992. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Fiancé as well as an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. Citizen spouse.

The Field Office Director concluded that the applicant failed to establish his spouse would suffer extreme hardship beyond normal emotional and financial distress and denied the application accordingly. *See Decision of Field Office Director* dated October 6, 2009.

On appeal, the AAO affirmed the applicant remained inadmissible pursuant to section 212(a)(6)(C)(i) of the Act because the fraud or material misrepresentations were not covered by the applicant's previous waiver application. *See AAO Decision*, September 16, 2011. The AAO moreover found the applicant did not demonstrate his spouse would experience extreme hardship given his inadmissibility and denied the application. *Id.*

On the motion to reopen and / or reconsider, filed by the applicant on October 19, 2011 and received by the AAO on June 24, 2013, counsel submits a statement on the Form I-290B, Notice of Appeal or Motion. Therein, counsel indicates the applicant's spouse recently retired, relies on her social security benefits, and cannot afford to pay her living expenses without the applicant's financial support. On the inadmissibility issues, counsel claims the applicant does not need a waiver for his false asylum claim because the misrepresentations on the asylum application were not material, as he never procured asylum status. Counsel additionally asserts receipt of the employment authorization document (EAD) does not constitute a benefit acquired by misrepresentation because he would have been eligible to receive the EAD without a determination on the asylum application. Counsel lastly contends the applicant is also not inadmissible for his 1973 false claim to U.S. citizenship because a waiver application was available to the applicant when he applied for permanent residence. No additional documents were submitted in support of the motion.

Upon review, the AAO finds the motion does not meet applicable requirements for motions to reconsider as set forth in 8 C.F.R. § 103.5(a)(3). This regulation states, in pertinent part, that "[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 [U.S. Citizenship and Immigration Services] policy." *Id.* On motion, the applicant has failed to cite

to any precedent decisions that establish that the AAO's decision was based on an incorrect application of law or policy.

The motion also fails to meet the requirements for a motion to reopen as delineated in 8 C.F.R. § 103.5(a)(2). This regulation states, in pertinent part, that "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." Although counsel indicates the applicant's spouse has recently retired, the applicant failed to supplement the record with any additional evidence.

As such, the motion does not meet the applicable requirements and must be dismissed. 8 C.F.R. § 103.5(a)(4).

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the motion will be dismissed, the proceedings will not be reconsidered or reopened, and the previous decisions of the Field Office Director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.