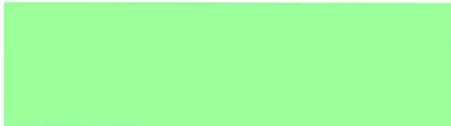


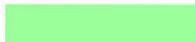


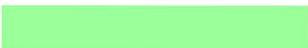
U.S. Citizenship  
and Immigration  
Services

(b)(6)



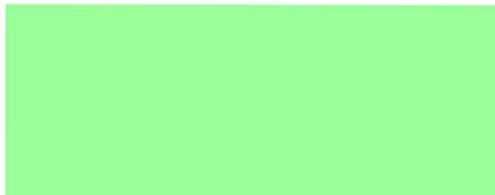
Date: **AUG 29 2013** Office: LOS ANGELES, CALIFORNIA

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 (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  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California, and a subsequent appeal was dismissed by Administrative Appeals Office (AAO). The matter came again before the AAO on motion to reopen and reconsider and we affirmed our prior decision. The matter came before the AAO a third time marked as an “appeal,” but as the regulations do not allow for an administrative appeal of an AAO decision, it was treated as a second motion and we again affirmed our prior decisions. The matter is now before the AAO a fourth time, marked again as an appeal, which we must treat as a third motion in order to consider it. The motion will be dismissed.

The applicant is a native and citizen of the Philippines who was 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. She is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director*, dated September 1, 2006.

On appeal, the AAO concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, and dismissed the appeal accordingly. *See Decision of the AAO*, dated April 9, 2009.

On motion to reopen and reconsider, the AAO concluded that while the applicant established that her U.S. citizen spouse would suffer extreme hardship in the event that he relocated to the Philippines to be with her, the applicant failed to establish extreme hardship in the event of separation were the applicant’s spouse to remain in the United States without her. *See Decision of the AAO*, dated February 14, 2012.

On second motion, the AAO affirmed our earlier decision as no new assertions or evidence establishing separation-related extreme hardship were submitted for consideration. *See Decision of the AAO*, dated April 19, 2013. In response, counsel for the applicant filed *Form I-290B*, Notice of Appeal or Motion (Form I-290B), received May 23, 2013.

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 USCIS policy. A motion to reconsider a decision on an application 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).

Counsel asserts on motion that: (1) the AAO erred in finding that the applicant admitted to having entered the United States on three occasions, the three entries “heavily impacted” the AAO’s decision, and this resulted in an erroneous conclusion of law; (2) the AAO abused its discretion in not considering that the I-601 waiver application presents more favorable factors than unfavorable and thus merits approval; (3) the extreme hardship standard applied by the AAO in this particular case is an abuse of discretion; (4) the applicant has established extreme hardship but the AAO continues to deny the waiver; and (5) supporting caselaw will be submitted in the brief. *See* Form I-290B, received May 23, 2013. In his subsequent brief, received June 24, 2013, counsel references a number of extreme hardship-related cases.

As counsel has stated no new facts to be proved in the reopened proceedings and has submitted no new affidavits or other documentary evidence, the AAO finds that the requirements of 8 C.F.R. § 103.5(a)(2) have not been met. Also, we find that the applicant has failed to establish that the decision was incorrect based on the evidence of record at the time of the initial decision and has therefore not met the requirements for a motion to reconsider under 8 C.F.R. § 103.5(a)(3).

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

- (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.

The record reflects that the applicant falsely represented herself as her sister-in-law, [REDACTED], and presented Ms. [REDACTED] birth certificate in order to secure a visa at the U.S. Embassy in Manila, Philippines. The applicant admitted that she subsequently presented the visa to gain entry into the United States by materially misrepresenting her identity. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The record supports this finding, counsel for the applicant concedes inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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 [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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien.

Counsel asserts that the only time the applicant ever entered the United States was on [REDACTED] 2000, that there is nothing in the record to suggest differently, and thus, the AAO made an

erroneous conclusion of law by finding that the applicant admitted that she has entered the United States on three occasions as these multiple entries heavily impacted the AAO's decision. The AAO finds counsel's assertion unpersuasive. In the Record of Sworn Statement, signed and dated by the applicant on May 2, 2006, the following exchange occurs:

Q. How many times did you enter into the United States?

A. Three.

Q. How did you enter into the United States? What kind of document did you present to apply for admission into the United States?

A. Tourist visa. Under assumed name, [REDACTED]

Additionally, the record contains copies of the visa issued September 16, 2000 in the name of [REDACTED] which the applicant has admitted to using multiple times to gain admission to the United States. The visa contains entry stamps confirming entries into the United States on October 10, 2000, May 1, 2001 and February 2, 2002. Corresponding original Form I-94 cards are also a part of the record. The evidence supports the AAO's finding that the applicant admitted to having entered the United States on three occasions. It is noted that prior counsel, in his appeal brief, dated October 27, 2006, states that the applicant: "last entered the United States without inspection in November 2005. Mrs. [REDACTED] entered the United States on a B1 visa under an assumed name." The AAO notes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act whether she presented a visa not lawfully issued to her to enter the United States on one occasion, or on three or more. As present counsel concedes inadmissibility on motion and as the AAO did not reach a discretionary analysis because the applicant failed to establish extreme hardship, the contention that multiple entries "heavily impacted" the AAO's decision is without merit, and no erroneous conclusions of law related thereto are found.

Counsel asserts that the extreme hardship standard applied by the AAO in this particular case is an abuse of discretion and that the applicant has established extreme hardship but the AAO continues to deny the waiver. After thoroughly reviewing the record, the AAO finds no indication that an improper extreme hardship standard has been applied to the present case. Rather the AAO finds, as clearly addressed in our February 14, 2012 decision, that while the applicant has established that her U.S. citizen spouse would experience extreme hardship were he to relocate to the Philippines, the applicant has not established extreme hardship resulting from separation. Accordingly, the AAO will not disturb this finding. As stated in our prior decision, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The evidentiary deficiency in the present case is the repeated failure to assert and document separation-related hardship to the applicant's spouse. Counsel contends that the AAO failed to properly consider a variety of factors. However, all but one of the factors raised by counsel relates only to hardship the applicant's spouse would experience if he relocates to the Philippines. As the applicant has failed to demonstrate extreme hardship from separation, the AAO has been unable to find that refusal of admission would result in extreme hardship to a qualifying relative.

On motion, counsel makes only one assertion concerning separation-related hardship to the applicant's spouse. To wit, counsel contends in his supporting brief: "Unusual hardship to USC spouse who is psychologically devastated considering the trauma of either losing his wife or moving to the Philippines with Applicant as this has been causing USC spouse severe anxiety and no peace of mind." While counsel appears to assert that the applicant's spouse would suffer psychological hardship were he to be separated from the applicant, no corroborating affidavit or statement from the applicant's spouse has been submitted, nor has any supporting documentary evidence. The record contains a single psychological evaluation, dated May 7, 2009 from [REDACTED] Ph.D., who interviewed the applicant's spouse one day earlier. The AAO previously reviewed Dr. [REDACTED] evaluation in our decision dated February 14, 2012, noting that while expert testimony is welcomed, the evaluation is based on a single interview with the applicant's spouse and appears to be based on self-reporting by him. The AAO found the evaluation insufficient to distinguish the applicant's spouse's emotional or psychological hardship from that commonly experienced by spouses of inadmissible aliens. It is noted that more than four years have passed since the applicant's spouse was interviewed by Dr. [REDACTED] and yet no more recent documentary evidence has been submitted to address any current or ongoing emotional/psychological condition. It has been more than seven years since the applicant's spouse wrote the only hardship declaration (dated June 14, 2006), submitted for the record. Though counsel has filed four appeals/motions since that time, no updated declarations from the applicant's spouse have been submitted despite the AAO repeatedly finding that evidence of separation-related hardship has been deficient in this case. In his 2006 declaration, the applicant's spouse indicated that he met the applicant on the Internet in May 2003 and they married in June 2004. He stated that being separated from the applicant would be undue dire hardship as it took until he was in his 50s to finally meet someone with whom he is willing to share the rest of his life. The applicant's spouse's only declaration in the record contains no other assertions of separation-related hardship.

In the AAO's April 9, 2009 decision on appeal, we noted that the applicant has neither asserted nor shown that her husband depends on her for economic support or would be unable to meet his obligations in her absence. We explained that while counsel contended that the applicant's spouse would be compelled to maintain two households in the event of separation, sufficient documentary evidence was not submitted demonstrating that the applicant would be unable to secure employment in the Philippines sufficient to support herself. The AAO further found that the record contains insufficient evidence demonstrating the applicant's spouse's current expenses, his anticipated additional expenses related to separation, or any other evidence from which a reasonable determination could be made concerning economic hardship in the event of separation. Counsel makes no assertions on motion of separation-related economic hardship to the applicant's spouse, and the record contains no current evidence related thereto.

The AAO acknowledges that separation from the applicant would cause various difficulties for her U.S. citizen spouse. However, we find that the evidence in the record is insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

As discussed above, although the applicant has demonstrated that his qualifying relative spouse would experience extreme hardship if he were to relocate to the Philippines to join her, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to a qualifying relative in this case. Accordingly, the applicant has not established that she is statutorily eligible for a waiver under section 212(i) of the Act.

Counsel asserts that the AAO abused its discretion in not considering that the I-601 waiver application presents more favorable factors than unfavorable and thus merits approval. Counsel references *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996). In *Mendez-Moralez*, the BIA held that if extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS may then assess whether a favorable exercise of discretion is warranted. *Id.* at 301. As the applicant in the present case has not established statutory eligibility by showing extreme hardship to a qualifying family member, the AAO has not conducted a discretionary analysis weighing the favorable and unfavorable factors as no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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. Therefore, the motion is dismissed.

**ORDER:** The motion is dismissed.