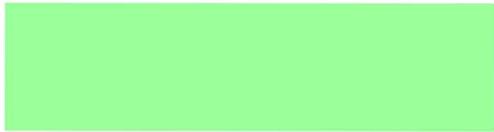


(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

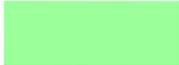


U.S. Citizenship  
and Immigration  
Services

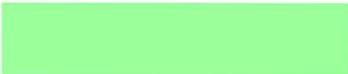


Date: **JAN 04 2013**

Office: PHILADELPHIA, PA

FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to his spouse and denied the waiver application accordingly. *Decision of the Field Office Director*, dated October 8, 2008. The field office director subsequently denied a motion, finding, *inter alia*, that some of the evidence submitted with the motion was already submitted by prior counsel and that there was no evidence that prior counsel was ineffective. *Decision of the Field Office Director*, dated February 3, 2009. The AAO dismissed a subsequent appeal, concluding that although the applicant established extreme hardship to a qualifying relative, the applicant did not warrant a favorable exercise of discretion. *Decision of the AAO*, dated September 16, 2011. The instant motion to reopen and reconsider followed.

Counsel asks the AAO to reconsider its decision and contends that the applicant is deserving of a favorable exercise of discretion. Counsel submits additional evidence with the motion.

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 applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel has submitted additional, new documentary evidence to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen. Accordingly, the motion is granted.

The new evidence submitted with the motion includes, *inter alia*: a letter from the applicant; a letter from the applicant's wife, [REDACTED] a letter from the couple's son; an affidavit from [REDACTED] brother; a copy of [REDACTED] father's death certificate; a copy of the birth certificate of the couple's third U.S. citizen child; and letters of support. The entire record was reviewed and considered in rendering this decision on the appeal.

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

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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 . . . .

In this case, it is uncontested that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The AAO previously found that the applicant established extreme hardship to a qualifying relative, his wife. Therefore, the sole issue before the AAO is whether or not the applicant is deserving of a favorable exercise of discretion.

After a careful review of all of the evidence, including all of the additional, new documentary evidence submitted with the motion, the AAO finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

The AAO had previously put great weight on the fact that the applicant had used a false identity, [REDACTED] for many years without fully explaining the extent to which he used the fraudulent name or the reasons behind it. On motion, the applicant explains that after he arrived in the United States, he obtained a work permit and social security card with the name of [REDACTED] because he was desperate to get a driver's license and a job. He also explains that his lawyer had advised him to file an application to adjust his status under the name [REDACTED] because the government already had his file under that name and that if he used his real name, the application would be denied. The applicant acknowledges that continuously using a fraudulent name is the biggest mistake he has made in his entire life and he recognizes that what he did was inexcusable. He contends he takes full responsibility and apologizes for all of his mistakes. The applicant also acknowledges that he was arrested in 1994 and contends he has never been arrested again. He states he is a changed and honest person, and asks that his wife and children not be punished for his mistakes.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse

factors in the present case include: the applicant's repeated use of a false identity; the applicant's 1994 arrest and conviction for public record fraud for presenting counterfeit documents in an attempt to obtain a driver's license; and periods of unauthorized employment. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including his U.S. citizen wife and three U.S. citizen children; the hardship to the applicant's entire family if he were refused admission; numerous letters of support describing the applicant as an honest, reliable, trustworthy, and responsible individual, a loving husband and father, and a great role model; letters of support describing the applicant's involvement with his temple and stating he is very well respected in the community; and the fact that the applicant has had no further arrests or convictions since 1994.

The AAO finds that, although the applicant's immigration violations and criminal conviction are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

**ORDER:** The motion will be granted and the underlying waiver application is approved.