



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 10 2013

OFFICE: ATLANTA, GA

FILE: [REDACTED]

IN RE: [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)

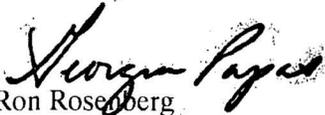
ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Atlanta, Georgia. The AAO dismissed an appeal of the decision, and the matter is now before the AAO on a motion to reopen. The motion will be granted. The underlying application remains denied.

The applicant is a native and citizen of South Korea who was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for obtaining an immigration benefit through the willful misrepresentation of a material fact. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that he may live in the United States with his U.S. citizen spouse and child.

In a decision dated May 21, 2009, the director denied the applicant's waiver application after finding the applicant failed to establish his wife would experience extreme hardship if he were denied admission into the United States. In a decision dated September 27, 2011, the AAO agreed that the applicant had failed to demonstrate a qualifying relative would experience extreme hardship either in the United States or in South Korea, if the applicant were denied admission into the United States. The appeal was dismissed accordingly.

In the present motion to reopen, counsel reasserts the applicant was unaware that a preparer provided false information on his Form I-20, Certificates of Eligibility for Non-immigrant (F-1) Student Status – For Academic and Language Students (Forms I-20). Counsel states that comparing the signature on the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) reflects that the signatures on the Forms I-20 are not those of the applicant. The applicant therefore did not willfully misrepresent material information for an immigration benefit. Counsel indicates further that new evidence establishes the applicant's mother and father-in-law are dependent upon the applicant and his wife for medical care and treatment, and that as a result, the applicant's wife will experience additional hardship if the applicant is denied admission into the United States.

In support of these assertions, counsel submits copies of the applicant's Forms I-20 and Form I-485 adjustment of status applications; medical evidence for the applicant's mother- and father-in-law; financial documentation for the applicant, his wife, and his wife's parents; and a letter from the applicant's sister-in-law. The entire record was reviewed and considered in rendering a decision on the motion.

The regulations state in pertinent part at 8 C.F.R. § 103.5(a):

(2) Requirements for motion to reopen. 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.

(3) Requirements for motion to reconsider. 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.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed

Counsel has stated new facts to be considered in a motion to reopen, and has supported the facts with affidavits and other corroborative evidence. The motion to reopen the September 27, 2011 AAO decision will therefore be granted.

It is noted that counsel refers to legal decisions that discuss the definition of "willful misrepresentation." Counsel has not filed a motion to reconsider, however, and counsel does not assert that the AAO misapplied law or Service policy in its previous decision.

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.

On September 27, 2011, the AAO determined the applicant had signed his Forms I-20 in order to obtain nonimmigrant student status in the United States, and that he was thus aware of material misrepresentations on his Forms I-20. On motion, counsel asserts that comparing the signatures on the applicant's 2008 adjustment of status applications and his previous Forms I-20 shows the signatures on the Forms I-20 are not his and that the applicant therefore did not willfully misrepresent material information for an immigration benefit.

While differences appear to exist in the English-language signatures on the applicant's October 25, 2000, Form I-20 and the applicant's 2008 adjustment of status documents, the AAO notes that the Korean signature on the applicant's first Form I-20, signed September 27, 2000, appears identical to the Korean signature on the applicant's passport, issued February 10, 2000. In addition, the applicant's Form I-20 signature appears identical to the Korean signature on the Form I-539, Application to Extend/Change Nonimmigrant Status (Form I-539) signed by the applicant on October 17, 2000. It is further noted that the English-language signatures on three of the applicant's Forms I-20, signed on October 29, 2001, on October 29, 2002, and on August 20, 2003, appear identical to the English signature contained on the applicant's Virginia driver's license, issued January 26, 2005. Counsel offers no expert evidence to establish that the signatures on the applicant's Forms I-20 are not those of the applicant, and comparison of the signatures supports finding that he signed these documents. The evidence submitted on motion therefore fails to show that the applicant was unaware of the material misrepresentations made on his Forms I-20.

Section 212(i) of the Act states:

The Attorney General [now Secretary, Department 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 resident spouse or parent of such an alien.

The applicant’s wife is his qualifying relative under section 212(i) of the Act. In the September 27, 2011 decision, the AAO found that evidence in the record failed to demonstrate the applicant’s wife would experience extreme emotional, physical or financial hardship in the United States or in South Korea, if the applicant’s waiver application were denied. On motion, counsel asserts that new evidence relating to the applicant’s mother- and father-in-law establishes the applicant’s wife will experience additional emotional and financial hardship if the applicant is denied admission into the United States.

It is noted that Congress did not include hardship to an alien’s mother-in-law or father-in-law as factors to be considered in assessing extreme hardship under section 212(i) of the Act. Hardship to the applicant’s in-laws may therefore only be considered to the extent that it may affect the applicant’s qualifying family member.

A doctor’s letter, submitted on motion, diagnoses the applicant’s father-in-law with hypertension that is well-managed with medicine and chronic obstructive pulmonary disease with shortness of breath. The applicant’s father-in-law needs assistance “with daily living” and to go to his doctor’s appointments; in taking inhaler medicine; and when needed, with oxygen therapy. Without assistance and management of his symptoms, his father-in-law’s health could deteriorate and lead to severe complications. Evidence of the applicant’s father-in-law’s Medicare insurance is contained in the record. The record also contains medical evidence reflecting the applicant’s mother-in-law has been treated for lower back and leg pain.

New financial evidence reflects that the applicant and his wife are employed. In 2011 the applicant’s wife completed a “short sale” of a property she purchased in 2006. Additionally, the applicant’s mother- and father-in-law declared bankruptcy and discharged their debts in September 2010. The applicant’s sister-in-law states in a letter that she is unable to care for her parents due to an impending divorce and financial problems.

The AAO finds that the evidence in the record, considered in its cumulative effect, fails to establish the applicant’s wife would experience emotional, financial or other hardship beyond that normally experienced upon inadmissibility or removal, if she remained in the United States or relocated to South Korea. The “short sale” evidence fails, without more, to demonstrate the applicant’s wife would experience financial hardship if the applicant were denied admission into the United States. The applicant’s in-laws’ bankruptcy evidence does not establish that they are financially dependent on the applicant or his wife or that the applicant’s wife would experience hardship in the United States or in South Korea owing to her parents’ financial circumstances. The record also lacks

documentary evidence to corroborate assertions that the applicant's sister-in-law would be unable to help her parents financially or with medical assistance, if necessary. In addition, the evidence fails to demonstrate that the applicant's mother- and father-in-law rely on the applicant and his wife for medical assistance, that their medical conditions and care would be affected if the applicant were denied admission into the United States, or that their medical circumstances would cause the applicant's wife to suffer hardship beyond that normally experienced upon removal or inadmissibility, if she remained in the United States or relocated with the applicant to South Korea.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. §1361. Here, the applicant has not met that burden. The underlying Form I-601 application therefore remains denied.

ORDER: The motion to reopen will be granted. The underlying application remains denied.