

(b)(6)

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



U.S. Citizenship
and Immigration
Services

DATE: OFFICE: NEW YORK CITY, NEW YORK

JUN 04 2013

FILE: [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 PETITIONER:

SELF REPRESENTED

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,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of India who presented a fraudulent marriage certificate in order to gain immigration benefits. He 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 having sought to procure a benefit under the Act through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. He 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 previously presented a fraudulent marriage certificate in an attempt to gain an immigration benefit, denied doing so in several interviews with USCIS, failed to provide sufficient evidence of extreme hardship to a qualifying relative, and denied the application accordingly. *See Decision of Field Office Director* dated March 26, 2009.

The AAO found the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, but he was not subject to the provisions of section 204(c) of the Act. *See Decision of AAO*, September 29, 2011. The AAO further found the applicant did not demonstrate that his qualifying relative would experience extreme hardship given his inadmissibility. *Id.* On motion, the AAO affirmed, finding the applicant still failed to demonstrate that his spouse would suffer extreme hardship in the scenarios of separation and relocation. *See AAO Decision on Motion*, December 20, 2012.

On this second motion, the applicant submits a statement on the Form I-290B, Notice of Appeal or Motion. Therein, the applicant indicates that his spouse was raised in the United States, is a naturalized citizen, and as she is also close to retirement age she would suffer extreme hardship should she have to relocate to India. The applicant moreover states that his spouse's medical records were lost due to damage caused by a hurricane, and that the spouse's age has nothing to do with her medical records or her fertility issues.

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.* As noted, the AAO dismissed the motion because the applicant failed to demonstrate he was qualified for a waiver of inadmissibility under section 212(i) of the Act. 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.” The applicant has not provided new facts upon filing the present motion, nor did he 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).

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion will be dismissed.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden. 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.