



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JUN 14 2013

Office: PHILADELPHIA, PA

[Redacted]

IN RE: Applicant:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request 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 Administrative Appeals Office (AAO) previously dismissed the applicant's appeal in a decision dated July 20, 2011. The matter is now before the AAO on motion. The motion will be dismissed.

The applicant is a native and citizen of Sierra Leone who was found to be inadmissible 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 attempting to procure admission to the United States through willful misrepresentation of a material fact. She seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse and children.

The field office director, Philadelphia, Pennsylvania, found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Form I-601 waiver application accordingly. *Decision of Field Office Director*, dated February 27, 2009. The applicant filed a timely appeal with the AAO alleging that the field office director had erred in finding that her qualifying spouse would not experience extreme hardship if the waiver application were denied. In our decision on appeal, we found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act. We also found that the applicant's U.S. citizen spouse would experience extreme hardship if the waiver application were denied. However, we denied the waiver application in the exercise of discretion because the record demonstrated that the applicant had engaged in a pattern of fraud to U.S. immigration officials while her waiver application was pending. Specifically, we found that as recently as June 14, 2011, the applicant allowed foreign nationals – [REDACTED] – to falsely claim her address as part of a fraudulent marriage scheme and lied to an investigator when questioned about the true residence and relationship of [REDACTED]. *Decision of AAO*, dated July 20, 2011.

On motion, counsel for the applicant contends that the applicant was never given an opportunity to respond to the allegation that she participated in the marriage fraud scheme of [REDACTED]. Counsel states that the applicant did not lie to immigration officials in relation to that investigation. Additionally, counsel asserts that the AAO erred in relying on the applicant's alleged lie to investigators as the strongest discretionary factor which outweighed all positive factors.

A motion to reopen must state the new facts to be proven 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 establish that the decision was based on an incorrect application of law or Service policy. 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). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the motion.

The applicant's motion to reopen and reconsider will be dismissed. The applicant contends that she did not lie to officials but she has not submitted evidence which supports her claim. On

motion, the applicant has offered one letter from [REDACTED], who states that he met [REDACTED] through the applicant and her husband and that he has been aware of [REDACTED] marriage since July 2009. *See Letter from [REDACTED]* dated October 24, 2011. [REDACTED] further states that [REDACTED] were living with the applicant's family in Delaware until January 2010, when Mr. [REDACTED] relocated to the New Jersey/New York area. *Id.* Finally, [REDACTED] states that [REDACTED] still visits Delaware occasionally and stays with the applicant and her family. *Id.*

[REDACTED] letter does not offer any new facts which would support the applicant's claim; to the contrary, his letter further confirms that the applicant lied to investigators. As we noted in our decision on appeal, the applicant was interviewed on June 14, 2011 by immigration officials in connection with an investigation regarding the validity of [REDACTED] marriage. [REDACTED] had claimed to reside at the applicant's address in Delaware. During her interview with investigators, the applicant stated that [REDACTED] still lived with her but that they were on vacation in New York City on the day of the investigation. [REDACTED] assertion that [REDACTED] moved out of the applicant's home in January 2010 supports a finding that the applicant lied to investigators on June 14, 2011 when she stated that [REDACTED] were still residing with her as of that date.

Counsel also states that [REDACTED] filed a Form I-751, Petition to Remove the Conditions of Residence, in October 2011 and that the results of that application "will make it clear that [the applicant] had no reason to lie." *Letter from [REDACTED]* dated March 15, 2012. However, there is no evidence in the record that the Form I-751 has been approved or that the applicant did not lie to investigators about that marriage. Furthermore, counsel states in the Form I-290B that the applicant "knows the two parties to the marriage the immigration officer is investigating and knows that they have lived in her home from time to time. Currently, the two parties to the marriage stay with the applicant when they are in the DC area and the wife's mother is being difficult. This is not very often." *Form I-290B*, dated August 17, 2011. However, as previously noted, the applicant informed investigators that [REDACTED] were living with her full time as of June 14, 2011. Additionally, the AAO notes that the applicant's home in [REDACTED] Delaware is approximately two hours from Washington, DC. The assertion that they stay with her while "in the DC area" does not support the applicant's claims that she did not lie when she stated, only two months prior to filing her Form I-290B, that [REDACTED] resided with her. In sum, the statements and submissions on motion have refuted rather than supported the applicant's claim that she did not lie to investigators.

Additionally, the applicant has not established that the AAO's decision was based on an error of law or an incorrect application of Service policy. Counsel for the applicant states that although "lying to USCIS (if lying occurred) is a serious negative factor, it is not the only factor to be considered and should not be the determinative factor thereby outweighing any positive factors. This is error." *Form I-290B*, dated August 17, 2011. However, in our decision on appeal, we properly weighed all relevant positive and negative factors. We specifically noted that the positive factors in the applicant's case were her family ties to the United States; the fact that she

had worked and paid taxes here; the care that she has provided for her two sons, who suffer from serious illnesses; the extreme hardship that her husband would experience if her waiver application were denied; the hardship her children would experience if she were removed; the fact that she would be removed to Sierra Leone, from which she was granted protection under the Convention Against Torture; and the applicant's involvement in her community through religious activities. We also noted the negative factors in her case, which included her use of a fraudulent passport in an attempt to enter the United States and the fact that she had recently lied to investigators, thereby perpetuating the fraudulent marriage scheme of [REDACTED]

While recognizing the "compelling positive factors" in the applicant's case, we found that the applicant's participation in [REDACTED] fraud scheme called into question the applicant's "character, veracity, and respect for the laws of the United States." *AAO Decision*, dated July 20, 2011. Furthermore, we noted that the applicant's "recent interactions with federal officers have been identified as possible criminal acts cognizable under Title 18 of the United States Code" and that her lies to investigators demonstrate that her use of a fraudulent passport "was not an isolated incident in attempt to flee Sierra Leone and Nigeria, but part of an ongoing lack of regard for the laws of the United States and a current inclination to make false statements to U.S. officers." *Id.* As a result, after carefully weighing all relevant factors, we found that the negative factors were sufficiently serious to outweigh the positive in this case. The applicant has not demonstrated on motion that our decision was in error. Although counsel stated in the Form I-290B, filed August 23, 2011, that he would submit a brief on this issue within 30 days, the record does not contain such a brief.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish he is eligible for the benefit sought. The applicant has failed to meet that burden and her motion will be dismissed.

ORDER: The motion is dismissed.