(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: MAY 14 2013 Office: DETROIT, MI FILE: A

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.

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. 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 waiver application was denied by the Field Office Director, Detroit, Michigan. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Albania 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 is the son of lawful permanent resident parents and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and parents in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative. The field office director also found that the applicant claimed he had never been arrested on his Form I-485; however, he claimed he was arrested and jailed in Albania in his asylum application. The field office director noted that the applicant may also be inadmissible for having committed an offense that would render him inadmissible, and that there is a question about the truthfulness of his asylum application. The field office director denied the waiver application accordingly.

On appeal, counsel contends the applicant's unintentional answer on his Form I-485 should not be a basis to deny his waiver application because his wife and parents would suffer extreme hardship if his waiver application were denied.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)

After a careful review of the entire record, the AAO finds that the applicant is ineligible for any benefits under the Act as a result of filing a frivolous asylum application. Section 208(d)(6) of the Act states:

> If the Attorney General [Secretary of Homeland Security] determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this chapter, effective as of the date of a final determination on such application.

In this case, the record shows that on August 27, 2010, an immigration judge found that the applicant filed a frivolous asylum application. The immigration judge specifically found that the applicant was warned twice of the consequences of filing a frivolous asylum application[1], but that the applicant nonetheless deliberately fabricated three alleged persecutory incidents which contained an overwhelming amount of inconsistencies, contradictory evidence, and lack of corroborating evidence. *Decision and Orders of the Court*, dated August 27, 2010. The record shows that the

[1] The record contains two notices to the applicant, dated July 9, 2004 and December 2, 2008, warning of the consequences of filing a frivolous asylum application.

applicant appealed this decision to the Board of Immigration Appeals (BIA) which dismissed the appeal, specifically upholding the immigration judge's finding that the applicant filed a frivolous asylum application. *Decision of the Board of Immigration Appeals*, dated March 26, 2012. In addition, the record shows that the applicant filed a motion to reconsider to the BIA. The BIA found that the applicant's motion was untimely filed, but nonetheless found that even if it were timely filed, there was no error in the BIA's prior decision. *Decision of the Board of Immigration Appeals*, dated September 28, 2012.

The record reflects that an immigration judge found that the applicant filed a frivolous asylum application. This has been affirmed twice by the BIA. The AAO has no jurisdiction to review these decisions. Pursuant to section 208(d)(6) of the Act, the applicant is barred from ever receiving any benefits under the Act. As such, no purpose would be served in determining whether the applicant is eligible for a waiver under section 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.