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



U.S. Citizenship  
and Immigration  
Services

DATE: NOV 06 2013

Office: SEATTLE, WA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Seattle, Washington, denied the waiver application and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted, but the underlying waiver remains denied.

The applicant is a native and citizen of Burkina Faso 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 her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and that the applicant does not merit a favorable exercise of discretion. The field office director denied the application accordingly. The AAO dismissed the appeal, finding that although the applicant established extreme hardship, the applicant does not warrant a favorable exercise of discretion.

Counsel has filed a motion to reopen, contending that there are new and additional facts. Counsel submits an affidavit from the applicant in support of 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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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

In addition to the documents specified in the AAO's previous decision, the record now also contains an affidavit from the applicant. The entire record was reviewed and considered in rendering this decision on motion.

Section 212(a)(6)(C)(i) of the Act provides:

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, the AAO previously found that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. Counsel does not contest this finding of inadmissibility on motion. In addition, the AAO previously found that the applicant established extreme hardship to a qualifying relative, her husband. 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 the applicant's new affidavit submitted with the motion, the AAO finds that the applicant has not met her burden of showing she merits a waiver of inadmissibility as a matter of discretion.

The AAO previously found that issues regarding the applicant's identity and her entry into the United States weighed heavily against her. Specifically, the AAO found that the applicant used three separate identities, including different dates of birth and different countries of birth, and that she had not adequately addressed the inconsistencies regarding her identities, including why she signed her second asylum application using the incorrect name she used on her first asylum application. The AAO further found that the applicant did not meet her burden of proving she was inspected or admitted into the United States, a requirement for eligibility for adjustment of status.

In response, the applicant submits an affidavit stating that at no time did she intend to defraud the government. According to the applicant, when she first arrived in the United States, she spoke limited English and a man helped her get a work permit. She states she presented this work permit in order to obtain a Washington State Identification Card because Washington State required a government-issued document. She contends she was not informed that this was wrong and that when she was informed she had to use her proper name, she applied for a new driver's license and work permit using her correct name. With respect to signing her second asylum application using an incorrect name, the applicant states this was an oversight. She contends that "the examiner should have reviewed the signature and pointed out this inconsistency as she had the experience to review the application after the interview was completed."

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 AAO finds that the applicant has not met her burden of showing she merits a favorable exercise of discretion. Although the applicant claims she spoke limited English and relied on another person, she was an adult who understood that her name, date of birth, and country of birth were misrepresented on her work permit. The applicant then used this fraudulent work permit to obtain a state identification card, also bearing a fraudulent name and date of birth. The applicant's contention that she was not informed that it was wrong to use different identities, and her contention that the asylum examiner should have pointed out that the applicant signed her fraudulent name as opposed to her true name, indicates she takes no responsibility, or has any remorse, for her actions. Furthermore, neither the applicant nor counsel addresses the fact that there is no evidence in the record showing the applicant was ever admitted into the United States.

Therefore, the balancing of favorable and adverse factors remains the same. Namely, the adverse factors in the present case include the applicant's misrepresentations of her identity in order to procure an immigration benefit, her continued use of her false identity without adequate explanation, and her failure

to provide any evidence of her entry into the United States. The favorable and mitigating factors in the present case include the applicant's family ties to the United States, including her U.S. citizen husband, and the extreme hardship to the applicant's husband if she were refused admission. The AAO finds that, when taken together, the favorable factors in the present case do not outweigh the adverse factors such that a favorable exercise of discretion is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The motion is granted but the underlying waiver application remains denied.