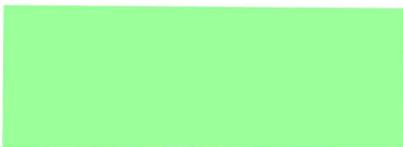


(b)(6)

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



U.S. Citizenship
and Immigration
Services

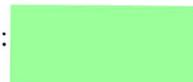


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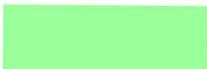
OFFICE: SEATTLE, WASHINGTON

File:



IN RE:

Applicant:



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:

SELF-REPRESENTED

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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Seattle, Washington and the subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion. The motion will be granted and the prior AAO decision will be affirmed. The underlying application will remain denied.

The applicant is a native and citizen of the Netherlands who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director*, dated February 11, 2013.

On appeal, the AAO concluded that the evidence in the record was insufficient to establish that extreme hardship would be imposed on a qualifying relative, and dismissed the appeal accordingly. *See Decision of the AAO*, dated September 5, 2013. In response, the applicant filed the present 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 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 USCIS policy. A motion to reconsider a decision on an application must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The applicant's spouse asserts on motion that there are "new facts" and "10 pages of additional evidence" for consideration in the form of a psychological assessment, and asks that the AAO "accept the new facts/additional medical evidence and render a favorable decision..." *See letter from the applicant's spouse*, dated November 8, 2013. The record has been supplemented on motion with said psychological assessment and the applicant's letter. The AAO finds that the applicant has met the requirements of 8 C.F.R. § 103.5(a)(2), and the motion will be granted and the application reopened.

In addition to the supplemental evidence described above, the record contains but is not limited to: Form I-290B and the applicant's spouse's statement thereon; various immigration applications and petitions; a "brief" in support of a waiver within which are two character reference letters; a hardship declaration from the applicant's spouse; the applicant's declaration; numerous letters of support; prior counsel's letter in support of a waiver; a fee waiver request and approval; financial records; medical, disability and workers compensation records; country conditions documents for the Netherlands; birth and marriage certificates; and the applicant's sworn statements and other documents related to her inadmissibility and removal proceedings. The entire record was reviewed and considered in rendering this decision on motion.

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.

The record shows that on May 9, 1996 the applicant attempted to gain admission to the United States by knowingly presenting the birth certificate of another individual whose identity she asserted as her own. When confronted by immigration officers concerning her false claim to U.S. citizenship, the applicant admitted that her then boyfriend had given her the false birth certificate and she willingly misrepresented her identity and citizenship to gain entry to the United States. The applicant signed a sworn affidavit detailing her activities. Based on the foregoing, the field office director found, and the AAO concurred on appeal, that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO's previous discussion on appeal concerning extreme hardship factors and related case law are hereby incorporated by reference.

On appeal, the AAO identified a number of evidentiary deficiencies and discrepancies of a financial and medical nature, many of which were previously identified by the field office director. The applicant has not addressed these deficiencies or discrepancies on motion. The applicant's spouse has consistently indicated that his sole personal source of income is from Social Security Disability, through which he received a total of \$9,947 in 2012. In a psychological assessment submitted on motion, [REDACTED] MA, LMHC, refers twice to the applicant's spouse's current employment, stating that he "works part-time for [REDACTED]" and that his anxiety and depression interfere with his overall functioning at home, at work, and in social environments. Ms. [REDACTED] offers no examples or explanations describing the interference to which she refers, and documentary evidence describing the spouse's current employment and demonstrating his income therefrom has not been submitted. Similarly, while a 2012 joint income tax return shows that the applicant earned \$9,260 through her employment with [REDACTED] it is asserted in an appeal brief of unknown authorship that the applicant "is currently employed by [REDACTED]". No documentary evidence confirming the applicant's employment with [REDACTED] or showing her income therefrom has been submitted. The AAO further identified that while the applicant and her spouse aver combined monthly expenses of \$3,191, corroborating documentary evidence has not been submitted. This deficiency has not been addressed or cured on motion. On appeal, the AAO concluded that the evidence in the record is insufficient to demonstrate that the applicant's spouse would be unable to meet his financial obligations in the

applicant's absence. As the applicant has failed to submit any financial documentation on motion to address this deficiency, there is no basis on which to reverse our earlier findings.

The record shows that the State of Washington Department of Labor and Industries denied the applicant's spouse's workers' compensation claim after an independent physician, conducting a medical examination in October 2010, determined that an injury to the applicant's spouse's left knee was not work-related as alleged and his right knee is not injured. The applicant's spouse stated that "all" his payments were stopped in December 2010. The record contains no documentary evidence showing that the applicant's spouse received workers compensation benefits prior to December 2010 or demonstrating the amount of these payments. The AAO identified in our earlier decision that while the record shows that an appeal of the Department's decision was granted and the applicant's spouse stated that the "hearing is set for April 20, 2012," the record contains no information or evidence concerning the outcome of this hearing despite it occurring prior to the filing of the applicant's waiver appeal. The present motion was filed by the applicant on October 7, 2013, nearly 18 months after the hearing. Still, the applicant's spouse has failed to address the hearing's outcome or the status of his workers compensation appeal and has not submitted any documentary evidence related to either his current medical condition or his current total income from all sources. Concerning the former, the AAO stated in our decision on appeal that while the record contains earlier medical records related to the applicant's spouse's disability, there is no clear indication as to his current condition and any limitations related thereto. The outcome of the applicant's spouse's workers compensation appeal is relevant because an independent physician determined that an injury to his left knee is not work-related and that his right knee is not injured. Without documentary evidence demonstrating the applicant's spouse's current medical condition(s), prognosis, treatment, and physical limitations, or indicating whether he requires medical or physical assistance and whether he can work or is in fact working, an accurate determination cannot be made concerning his claims of medical/physical hardship.

As the applicant has not addressed or submitted any documentary evidence related to the evidentiary deficiencies described in our earlier decision, and as the applicant has not asserted that our decision was incorrect based on the evidence of record at the time of the initial decision or that the decision was based on an incorrect application of law or USCIS policy, there is no basis on which to reverse our earlier findings related to claimed medical and economic hardship. The AAO has, however, considered the psychological assessment submitted on motion.

The AAO found on appeal that assertions of emotional hardship made in personal declarations and in a brief of unknown authorship were insufficient to distinguish emotional challenges faced by the applicant's spouse from those ordinarily associated with a spouse's inadmissibility or removal. On motion, Ms. [REDACTED] indicates that she assessed the applicant's spouse from October 11 to 25, 2013 and has diagnosed him with generalized anxiety disorder and major depressive disorder, single episode, severe. Ms. [REDACTED] posits that without "immediate attention and subsequent medical and psychological treatment," the applicant's spouse's "mental and emotional well-being can deteriorate which eventually can lead to development of severe mental disorders." She adds that any kind of alteration in his life "will negatively affect his emotional condition and mental well-being and will jeopardize the positive outcomes of his psychotherapeutic treatment." The record contains no documentary evidence showing that the applicant's spouse has undergone psychotherapeutic treatment or any other treatment for depression, anxiety or any other emotional

or psychological condition. Ms. [REDACTED] concludes that the applicant's spouse "will suffer exceptional and extreme hardship if he has to either separate from his wife or has to follow her to another country." The AAO acknowledges the applicant's spouse's contention that he will experience emotional hardship were he to remain in the United States while his wife relocates abroad, but the evidence on the record does not establish the severity of this hardship or the effects on his daily life.

The AAO recognizes that the applicant's spouse will endure hardship as a result of a long-term separation from the applicant. However, his situation if he remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The record fails to establish that the applicant's spouse's emotional and financial well-being is dependent on the applicant's physical presence in the United States. Based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse will experience extreme hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility.

As the applicant has not challenged the AAOs findings concerning relocation or submitted documentary evidence related thereto, and as the applicant has not asserted that our decision was incorrect based on the evidence of record at the time of the initial decision or that the decision was based on an incorrect application of law or USCIS policy, there is no basis on which to reverse our earlier findings concerning relocation. As previously noted, the AAO has, however, considered the psychological assessment submitted on motion to reopen.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including his stated emotional, physical, cultural, economic and employment concerns. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to the Netherlands to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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 prior AAO decision is affirmed. The waiver application remains denied.