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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date: APR 16 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director Los Angeles, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on July 19, 2001. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be dismissed, and the order dismissing the appeal will be affirmed.

The record reflects that the applicant is a native and citizen of Yemen. She was found to be 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 having procured a visa and admission into the United States by fraud and willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative based on her February 14, 1999 marriage to a U.S. citizen. She 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 and reside with her U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and the application was denied accordingly. *See District Director Decision* dated August 14, 2000. The decision was affirmed by the AAO on appeal. *See* AAO Decision, dated July 19, 2001

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.

Section 212(i) of the Act provides that:

> (1) The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record clearly reflects and the applicant admitted that on her December 7, 1998, application for a nonimmigrant visa at the American Embassy in Sanaa, Yemen, she claimed to be married when in fact she was single. She then used that nonimmigrant visa to procure admission into the United States and married a U.S. citizen on February 14, 1999. By making a false claim on her nonimmigrant visa application the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

On appeal counsel stated that the Immigration and Naturalization Service (now known as Citizenship and Immigration Services [CIS]), misapplied the law, misconstrued the facts and perhaps improperly revoked the applicant's conditional resident status. Counsel stated that the applicant, without giving thought to the consequences, applied for a tourist visa for admission into the United States as the spouse of a family friend for the sole purpose of avoiding any undue restrictions and punishment by the Yemen government and that the applicant could have obtained a tourist visa on her own had she chosen to apply as an unmarried person. Counsel's assertion is not persuasive since the applicant tried to apply for a nonimmigrant visa as single on May 25, 1997, and that application was denied. Counsel further stated that section 212(a)(6)(C)(i) of the Act does not apply to the applicant, and that it was premature to require the applicant to provide evidence of extreme hardship to her spouse because the burden is on the Service to show that the applicant's marriage was the product of fraud for the sole purpose of obtaining a visa to allow the applicant to enter the United States. The issue in this proceeding is not the validity of her present marriage but her inadmissibility due to misrepresentation of a material fact during her application for a nonimmigrant visa in order to be admitted into the United States.

On motion to reconsider counsel submits a brief in which he repeats the same facts and evidence he had presented with his brief on appeal.

The regulation at 8 C.F.R. § 103.5(a) states in pertinent part:

> (a) Motions to reopen or reconsider. . .
>
> (2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence.
>
> . . . .
>
> (3) Requirements for motion to reconsider. 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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.
>
> (4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The AAO finds that in the motion to reconsider no new information or evidence was submitted and the applicant did not identify any legal error or misapplication of law in the previous AAO decision.

The issues in this matter were thoroughly discussed by the district director and the AAO in their prior decisions. In the motion to reconsider the applicant failed to provide any new evidence or set forth any new facts to be proved. Since no new issues have been presented for consideration, the motion will be dismissed.

ORDER: The motion is dismissed. The order of July 19, 2001, dismissing the appeal is affirmed.