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U.S. Citizenship
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Services

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File:



Office: PHOENIX

Date: JUN 07 2006

IN RE:



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

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona. The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal and affirmed the district director's decision to deny the application. The matter is now before the AAO on motion to reconsider. The motion will be dismissed.

The applicant is a native and citizen of Ghana who was found to be inadmissible to the United States 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant 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 with his U.S. citizen wife and children.

The district 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated July 15, 2002. On November 3, 2003, the AAO affirmed this determination on appeal.

On December 2, 2003, the applicant filed the present Motion to Reconsider the AAO's decision. On motion, the applicant's wife contends that she and the applicant's children will suffer hardship if the applicant is prohibited from remaining in the United States. *Statement from Applicant's Wife in Motion to Reconsider*, dated November 25, 2003. The applicant's wife states that she and her family have the same assets as previously reported to the AAO. *Id.* at 1. She explains that, during the applicant's absence in 2000, she and the applicant's children endured significant emotional hardship. *Id.* at 1-2. She indicated that the applicant was part of a medical team that was recently commended for saving a child. *Id.* at 2. The applicant's wife asserts that reports reflect that armed robbery in Ghana has escalated, suggesting that she and the applicant's children are at a greater risk of harm should they relocate to Ghana with the applicant. *Id.* at 1.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

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.

Upon review, the applicant has not established that the AAO's prior decision "was based on an incorrect application of law or Service policy." 8 C.F.R. § 103.5(a)(2). The applicant's wife briefly discusses facts of the applicant's case, yet the applicant does not address the prior decision or the AAO's application of law or Citizenship and Immigration Services (CIS) policy. Thus, the applicant has not established that the AAO applied an erroneous interpretation of law or policy, as required by the regulation at 8 C.F.R. § 103.5(a)(2).

In light of the possibility that the applicant intended to move the AAO to assess new events that have occurred since the prior decision, the AAO will consider whether the applicant's motion to reconsider meets the requirements of a motion to reopen.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹

On motion, the applicant's wife primarily addresses facts that were previously presented to CIS. She provides that she and the applicant's children endured emotional hardship during that applicant's absence in 2000. Yet, as the AAO's decision was issued on November 3, 2003, this event is not "new" as contemplated by the regulation at 8 C.F.R. § 103.5(a)(2).

The applicant's wife indicates that the applicant was honored for his participation on a medical team, yet this event does not have a bearing on whether the applicant's wife or children will experience extreme hardship in his absence.

The applicant's wife states that reports reflect that armed robbery in Ghana has escalated, suggesting that she and the applicant's children are at a greater risk of harm should they relocate to Ghana with the applicant. This change, if shown, may constitute a new fact that has a bearing on the applicant's eligibility for a waiver. However, the applicant has not provided the reports that his wife references, or any other documentation that conditions in Ghana have changed since that date of the AAO's prior decision. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the applicant has not met that burden.

Based on the foregoing, the previous decision of the AAO will be affirmed and the applicant's motion will be dismissed.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

ORDER: The previous decision of the AAO is affirmed. The motion is dismissed.

¹ The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>" WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).