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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[Redacted]

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

FILE: [Redacted]

Office: HELENA, MT

Date: **AUG 29 2003**

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:
[Redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, [REDACTED]. A subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed and the previous decisions of the District Director and the AAO will be affirmed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States (U.S.) under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted and for having admitted to committing a crime involving moral turpitude (battery against his wife and battery against his former girlfriend). The applicant was additionally found to be inadmissible to the U.S. under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C) (for willfully misrepresenting material facts regarding his arrests for battery in an adjustment of status application and interview). The applicant was also found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II) (for being unlawfully present in the U.S. for more than one year, departing the U.S. in November 2000 pursuant to an advance parole, and reentering the U.S. within 10 years of his departure). The applicant is married to a U.S. citizen and he is the beneficiary of an approved petition for alien relative. The applicant seeks to reopen his waiver of inadmissibility application in order to remain in the United States and adjust his status to that of a lawful permanent resident.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the application accordingly. On appeal, the AAO found that the applicant had failed to address specifically, the grounds for denial set forth in the decision of the district director and summarily dismissed the applicant's appeal.

In the present motion to reopen, counsel asserts that the applicant never willfully misrepresented to the Bureau of Citizenship and Immigration Services ("Bureau", formerly the Immigration and Naturalization Service), material information regarding his criminal arrests. Counsel asserts further that the applicant's unlawful presence in the U.S. should not be the basis for a denial because he had an approved petition for alien relative prior to April 30, 2001. Counsel asserts further that the applicant's wife (Mrs. [REDACTED]) would suffer extreme hardship if the applicant's waiver is not granted because she has type I diabetes, is unable to work, and depends on the petitioner for financial, emotional and physical support to meet her daily needs. In

support of his claims, counsel submitted a sworn affidavit from the applicant's wife attesting to the above assertions. Counsel provided no other information or evidence to support his claims.

The sworn affidavit prepared by Mrs. [REDACTED] consists of conclusionary statements that are identical to the assertions made by counsel in his motion to reopen. It is noted that the assertions made in the present motion are identical to the claims made by the applicant in his initial appeal, dated June 12, 2002.¹ At best, the assertions made in the applicant's appeal, in counsel's motion to reopen and in Mrs. [REDACTED] affidavit identify the basis of the applicant's inadmissibility and the issues that the applicant needs to address on appeal. The issues are left unaddressed, however, and neither counsel, the applicant, nor Mrs. [REDACTED] provide any new or detailed information, evidence or documentation to contest the basis of the district director's denial and the AAO's dismissal of the applicant's case.

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

(a) Motions to reopen or reconsider

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¹ The applicant asserted the following as the basis of his initial appeal:

. . . .

2. Whether the Service erred in concluding that neither the applicant nor his U.S. citizen wife had shown extreme hardship sufficient to justify a waiver under either sections 212(h), 212(i) or 212(a)(9)(B)(v), when his wife has uncontrolled type I diabetes, and he is the only one who can attend to her physically, financially and emotionally.
3. Whether the Service erred in concluding that the applicant had committed a crime of moral turpitude under the status of his record.
4. Whether the Service erred in denying him status on the basis of fraud or willful misrepresentation, when the applicant did indicate to the officer that he had been arrested for fighting with a person he knew, referring to a battery charge in 1999.
5. Whether the Service erred in concluding that applicant had accrued unlawful presence, when applicant applied through his U.S. citizen wife for permanent residency several years ago.

(2) Requirements for motion to reopen. 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.

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(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

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Counsel failed to provide any evidence to contest the evidence in the record regarding the applicant's inadmissibility due to the commission of crimes involving moral turpitude, his material misrepresentation or his criminal record and his unlawful presence and departure and reentry into the U.S. in 2001. In addition, counsel has failed to provide any new or material evidence or information (medical, financial, emotional or otherwise) to corroborate the assertion that Mrs. [REDACTED] would suffer extreme hardship if the applicant's waiver application were denied.

Because counsel failed to establish any erroneous conclusion of law or statement of fact in his motion to reopen, the motion will be dismissed.

ORDER: The appeal is dismissed and the previous decisions of the District Director and the AAO will be affirmed.