

Identifying data deleted to
prevent clear unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H3

FILE:

Office: MIAMI

Date: AUG 20 2007

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

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, Chief
Administrative Appeals Office

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

The applicant is a native of Brazil and a citizen of Germany. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for a period of more than 180 days but less than one year. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to remain in the United States with her U.S. citizen husband and child.

The District Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative and denied the waiver application accordingly. *Decision of Acting District Director [REDACTED]*, dated November 29, 2001. The AAO affirmed the District Director's decision on appeal. *Decision of AAO*, dated July 19, 2002.

In the present motion to reopen and reconsider, counsel maintains that the AAO failed to consider relevant evidence in making its decision. Counsel asserts that he submitted a brief and other evidence, including a psychological evaluation by [REDACTED], less than thirty days after the appeal was filed, but the AAO stated in its decision that it had received no new information or documentation and, therefore, made a decision based on an incomplete record. Counsel submits shipping documents to establish that the brief and other evidence were submitted and were received by the AAO in January 2002. Counsel contends that had the AAO reviewed all the evidence submitted, it would have found that the applicant had met her burden in showing extreme hardship to a qualifying relative.

Contrary to counsel's assertions, and even to some of the language in the AAO's decision, the record shows that the AAO did receive and did consider counsel's brief and [REDACTED] psychological evaluation in making its decision. The record contains the original brief dated January 23, 2002 with a date stamp indicating it was received by the AAO on January 29, 2002. The AAO's decision itself indicates that the brief and supporting documents were considered in rendering the decision:

The record contains a brief from counsel indicating that if the applicant is required to depart the United States, her spouse has not yet decided whether their daughter would return to Brazil with the applicant or remain in the United States with him. Counsel states that for the spouse to relocate to Brazil with the applicant would prove disastrous for the family due to the spouse's inability to speak Portuguese and obtain adequate employment to support the family in that country. Counsel also states that the spouse is concerned for the safety and welfare of the applicant and their child should they have to move to Brazil due to the economic and political conditions in that country.

The record also contains an assessment of psychological hardship dated July 23, 2001 indicating that both the applicant and her spouse are experiencing Adjustment Disorder with Mixed Emotional Features due to the possibility of separation. It is further reported that if

they are forced to separate, the couple's emotional status would worsen and they both may require medication to help them cope with the stress for as long as the separation persists.

Decision of AAO, dated July 19, 2002.

Counsel has not identified in the present motion any specific legal errors in the prior AAO or District Director decisions other than the perceived failure of the AAO to consider his brief and other evidence previously submitted. Although the AAO stated in its decision that it had not received any additional documentation from counsel subsequent to the filing of the appeal, the analysis of the applicant's evidence provided by the AAO in the decision reveals that the AAO had received and considered all of the documents submitted by counsel.

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 in 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 issues raised in counsel's motion to reconsider were thoroughly addressed in the prior AAO decision, and counsel failed to establish any substantive error in the decision of the AAO or the District Director.

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

ORDER: The motion is dismissed, the previous decisions of the District Director and the AAO are affirmed and the application is denied.