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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

H4

[redacted]

MAR 26 2004

FILE: [redacted] Office: SAN FRANCISCO, CALIFORNIA Date:

IN RE: Applicant: [redacted]

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

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, San Francisco, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is before the AAO on a motion to reconsider. The motion will be dismissed and the previous decisions of the district director and the AAO will be affirmed.

The applicant is a native of Israel and national of Jordan who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. In April 1995, the applicant married a native of Jordan and lawful permanent resident of the United States who subsequently naturalized as a citizen of the United States in October 1998. The applicant is the beneficiary of an approved Petition for Alien Relative as the spouse of a U.S. citizen. He 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 and reside with his spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See District Director Decision* dated March 23, 2001. The decision was affirmed by the AAO on appeal. *See AAO decision,* dated May 13, 2002.

The record reflects that the applicant was admitted to the United States with a nonimmigrant visa on September 9, 1989, for a period of six months, expiring on March 8, 1990. The applicant remained in the United States beyond his authorized stay and married his present spouse on April 11, 1995. The record further reflects that an I-512, Authorization for Parole of an Alien into the United States (I-512), was issued to the applicant on August 26, 1999. The applicant departed the United States on an unknown date after the issuance of the I-512 and was paroled into the United States on December 18, 1999. It was this departure that triggered his unlawful presence.

In the motion to reconsider counsel submits a brief, a letter from the Bay Area Pediatric Group, a letter from the spouse's marriage and family therapist and news articles concerning Jerusalem and Hebron. The letter from the Bay Area Pediatric Group states that one of the applicant's children suffers form reactive airways disuse and her episodes of asthma are often brought on and worsen by allergies, such as the dusty climate in the Middle East. A similar letter was submitted with the first appeal. Counsel submits the same report he submitted in the first appeal from the spouse's marriage and family therapist in which it is stated that the applicant's spouse and his children would experience psychological and emotional trauma if the applicant were to be removed from the United States.

The issues presented in the motion to reconsider by counsel were thoroughly discussed by the district director and the AAO in their prior decisions. No new issues other than the medical documents for the applicant's child have been presented for consideration. As hardship to the applicant's children is not a consideration in these proceedings, that documentation is not relevant and will be given no weight.

The regulation in 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 issues in this matter were thoroughly discussed by the district director and the AAO in their prior decisions. The applicant in this case failed to provide any new documentation or set forth any new facts to be proved. The applicant also failed to identify or state any erroneous conclusions of law or statements of fact in his motion. Since no new issues have been presented for consideration, the motion will be dismissed and the prior district director and AAO decisions will be affirmed.

ORDER: The motion to reconsider is dismissed and the prior district director and AAO decisions are affirmed.