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U. S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: SEP 27 2013 OFFICE: OAKLAND PARK FILE:

IN RE:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility was denied by the Acting Field Office Director, Oakland Park, Florida. The acting field office director's decision was appealed to the Administrative Appeals Office (AAO) and the appeal was dismissed. The matter is now before the AAO on motion. The motion will be dismissed.

The applicant is a native and citizen of Trinidad and Tobago who was found to be inadmissible 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 of crimes involving moral turpitude. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen wife and lawful permanent resident mother.

In a decision, dated May 20, 2011, the acting field office director determined that the applicant failed to establish extreme hardship to his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel stated that the decision by the acting field office director was in error and contrary to the law and evidence presented. Counsel stated that he would be submitting a brief within 30 days, but failed to submit a brief and/or additional evidence.

In a decision, dated June 14, 2013 and in accordance with 8 C.F.R. § 103.3(a)(v), the AAO summarily dismissed the appeal.

On motion, counsel submits a brief and asserts that the AAO's previous decision to summarily dismiss the applicant's appeal was improper because a brief and additional evidence was filed with the Oakland Park, Florida Field Office.

However, the Notice of Appeal (Form I-290B), the instructions for the Form I-290B, and the field office director's decision all indicate that any briefs and/or additional evidence filed after the filing of the initial Form I-290B are to be filed directly with the AAO. No briefs or additional evidence were filed with the AAO; thus, summary dismissal was proper.

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. 8 C.F.R. § 103.5(a)(2). 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In the applicant's case, counsel has failed to establish establish that the decision was based on an incorrect application of law or Service policy. Counsel has also failed to submit any new evidence.

Thus, the motion does not meet the requirements of a motion to reconsider or a motion to reopen and must be dismissed.[1]

As the applicant has failed to establish that the decision was based on an incorrect application of law or Service policy, or to submit new evidence, the motion is dismissed.

ORDER: The motion is dismissed.

[1] Even were we to consider the entire record, we would not find extreme hardship to the applicant's spouse. The hardships asserted by the applicant's spouse are not adequately supported by the record nor do they rise to the level of extreme hardship. 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)). Similarly, without documentary evidence to support a claim, the assertions of counsel will not satisfy an applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant did not provide documentation to support the hardship statements made by his spouse or by counsel.