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U.S. Citizenship  
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[Redacted]

File:

[Redacted]

Office: PHOENIX

Date: JUL 12 2006

IN RE:

[Redacted]

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:

[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.

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 reopen and reconsider. The motion will be dismissed.

The applicant is a native and citizen of Mexico 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.

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 January 3, 2002. On November 3, 2003, the AAO affirmed this determination on appeal. On December 3, 2003, the applicant filed the present Motion to Reopen and Reconsider the AAO's decision.

#### 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.<sup>1</sup>

On motion, counsel for the applicant asserts that news facts have come to light since the applicant filed his waiver application. *Brief in Support of Motion*, dated December 2, 2003. Counsel states that the applicant's wife's mother has an immigrant visa petition pending, as she was sponsored by the applicant's sister-in-law who is a U.S. citizen. *Id.* at 3-4. Counsel contends that this new fact reflects that the applicant's wife has fewer ties to Mexico than when the waiver application was filed, as her mother will soon reside in the United States. *Id.* at 4. Counsel further states that conditions in Mexico are poor, including a high rate of crime and poor environmental conditions. *Id.* at 4-6.

Upon review, the applicant has not shown that new facts are available for consideration to support reopening the waiver proceedings. Counsel states that the applicant's mother-in-law will soon reside in the United States pursuant to a pending immigrant visa application. However, the fact that the applicant's mother-in-law has a pending application for an immigration benefit does not serve as evidence that she will in fact be granted such benefit. The applicant has not indicated whether his mother-in-law is still residing in Mexico presently, or

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<sup>1</sup> 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).

whether she will continue to reside there if she does not obtain a U.S. immigrant visa. Thus, counsel's assertion regarding a change in the applicant's wife's connections to Mexico is based on speculation. A waiver application may not be approved based on speculation of future eligibility or after the applicant becomes eligible under a new set of facts. See e.g. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Counsel discusses conditions in Mexico, implying that conditions have worsened since the applicant filed his waiver application. However, the record does not contain documentation to support that there has been a change in conditions in Mexico. 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)).

While counsel discusses potential hardships to the applicant's wife, he does not identify other possible new facts that were not considered by Citizenship and Immigration Services (CIS.) Thus, the applicant has not established that there are new facts that may serve as the basis for a motion to reopen.

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.

### **Motion to Reconsider**

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.

On motion, counsel does not directly assert that the AAO's decision was based on an erroneous interpretation of law or Citizenship and Immigration Services (CIS) policy. Counsel does reference the fact that the AAO cited the decision of the U.S. Supreme Court in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). *Brief in Support of Motion* at 6, dated December 2, 2003. Counsel distinguishes the facts of the present matter from those under review in *INS v. Jong Ha Wang*. *Id.* Specifically, counsel notes that the applicant and his wife have fewer educational credentials and financial resources than the applicant in *INS v. Jong Ha Wang*, and thus they will suffer greater economic detriment if they are compelled to relocate to Mexico. *Id.* Counsel explains that the applicant's wife has obtained a license to act as an insurance agent, and she currently works in this field. *Id.* at 6-7. Counsel asserts that the applicant's wife will be unable to secure comparable work in Mexico. *Id.* Counsel contends that the applicant's wife will be unable to meet her current financial needs if she remains in the United States without the applicant, and that she would likely have to reside in more meager accommodations. *Id.* at 7.

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). As highlighted by counsel, the AAO previously cited the decision of the U.S. Supreme Court in *INS v. Jong Ha Wang* to reflect that "the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." *Prior Decision of the AAO*, dated November 3, 2003. In the context of the AAO's prior decision, *INS v. Jong Ha Wang* was cited as support for the general proposition that an applicant must show more than common financial hardship to a qualifying relative to establish extreme hardship. The AAO did not indicate that the present facts are sufficiently similar to those in *INS v. Jong Ha Wang* to warrant a similar outcome. Thus, the AAO's reference to *INS v. Jong Ha Wang* was not in error, and does not constitute "an incorrect application of law or Service policy." 8 C.F.R. § 103.5(a)(2).

It is noted that counsel indicates that the applicant's wife is a licensed insurance agent and she performs related work. However, the applicant has provided no documentation to show her current income such that the AAO can compare it to her household's regular expenses. Thus, the AAO is unable to fully assess the financial impact the applicant's departure would have on his wife, should she remain in the United States. Counsel contends that the applicant's wife would be unable to secure comparable employment should she relocate to Mexico, yet the record contains no evidence to support this assertion. While counsel states that "it is common knowledge that titles and higher education are extremely important to obtaining meaningful and gainful employment in Mexico," without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The 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). Thus, the AAO's prior assessment of the prospective financial impact to the applicant's wife's was proper based on the evidence of record.

### Conclusion

Based on the foregoing, the applicant has not met the requirements of a motion to reopen. Upon reconsideration of the AAO's prior decision, the AAO applied a correct interpretation of law and CIS policy. Thus, 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.