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



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO
(RELATES)

Date:

MAY 07 2009

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)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be dismissed and the underlying application denied.

Counsel asks the AAO to reconsider its previous decision of November 14, 2006, and submits additional evidence for a motion to reopen. According to the regulation at 8 C.F.R. § 103.5(a)(3), 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 Citizenship and Immigration Services (CIS) policy. In this case, counsel does not assert that the AAO's previous decision incorrectly applied the law or CIS policy. Rather, counsel makes the same argument he made in his initial appeal to the AAO – *i.e.*, relying on *INS v. St. Cyr*, 533 U.S. 289 (2001), that retroactively applying the current version of section 212(i) of the Act to the applicant violates her right to due process. The AAO addressed, and rejected, counsel's argument in its previous decision. *See Decision of the AAO, supra*, at 2-5. The AAO must dismiss the motion to reconsider as counsel does not assert that the AAO's previous decision incorrectly applied the law or CIS policy.

According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the **new** facts to be provided and be supported by affidavits or other documentary evidence. The applicant submits additional support for her waiver application, including: letters from the applicant, her husband, and her child; letters of support from the applicant's church and the couple's child's school; letters from the child's doctors; and photographs of the applicant's family. However, no new facts are asserted in the motion. Rather, the affidavits and letters of support ask the AAO to reverse its decision out of compassion for the family. While the AAO is sympathetic to the family's circumstances, there are no new facts upon which the AAO may reverse its previous decision. To the extent the applicant submitted two letters from her daughter's doctors stating that the daughter is in psychiatric treatment and suffers from extreme anxiety, as the AAO previously stated, hardship to the alien's children may experience is not a permissible consideration under the statute except as it may affect the applicant's spouse. *See Decision of the AAO*, dated November 14, 2006, at 5 ("hardship to the applicant's U.S. citizen children will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative."). Significantly, the applicant's spouse makes no mention of the couple's daughter's psychiatric treatment. *Letter from* [REDACTED] dated December 9, 2006. Because no new facts have been provided, the AAO must dismiss the motion to reopen.

In light of the above, the motion is dismissed.

ORDER: The motion is dismissed and the underlying application denied.