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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: LOS ANGELES (SANTA ANA)

Date: NOV 06 2009

IN RE:

Applicant:

[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).

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who entered the United States on April 29, 2001, on a visitor's visa; however, the applicant admitted that he intended to work and reside in the United States. On April 29, 2004, the applicant's naturalized United States citizen daughter filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On May 7, 2004, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On January 11, 2005, the applicant's Form I-130 was approved. On March 3, 2005, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-601). On March 9, 2005, the District Director denied the applicant's Form I-601, finding that the applicant failed to demonstrate extreme hardship to his qualifying relative. On April 8, 2005, the applicant, through counsel, filed an appeal of the District Director's decision with the AAO. On November 14, 2006, the AAO dismissed the applicant's appeal. On December 14, 2006, the applicant, through counsel, filed a motion to reconsider/reopen the AAO's decision. On January 4, 2007, the District Director denied the applicant's Form I-485. On January 17, 2007, the District Director denied the applicant's motion to reopen; however, on July 13, 2007, the District Director reopened the applicant's waiver application and forwarded the applicant's motion to reopen to the AAO.

In the present motion to reconsider and reopen, the applicant, through counsel, asserts that the applicant's case should be reopened because of the applicant's wife's medical and psychological condition, and the extreme hardship that she will suffer if the applicant is removed from the United States. On appeal, counsel submitted medical documentation establishing that the applicant's wife has a slightly enlarged liver and a hernia. However, the AAO notes there was nothing from a doctor indicating exactly what the medical issues are, any prognosis or what assistance is needed and/or given by the applicant. Additionally, the AAO notes that there was no documentation submitted establishing that the applicant's wife could not receive treatment for her medical conditions in Mexico or that she has to remain in the United States to receive her any medical treatments. In an evaluation dated December 5, 2006, [REDACTED] diagnosed the applicant's wife with major depressive disorder and anxiety disorder. The AAO notes that although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment is based on one interview between the applicant's wife and a therapist. There was no evidence submitted establishing an ongoing relationship between the therapist and the applicant's wife. Moreover, the conclusions reached in the submitted assessment, being based on one interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the therapist's findings speculative and diminishing the assessment's value to a determination of extreme hardship.

The AAO notes that the issues raised by counsel in the motion to reopen and reconsider were previously raised in the initial appeal and those issues were addressed by the AAO. Counsel did not identify any legal errors in the prior AAO or District Director's decisions, and aside from the

medical documentation and psychological diagnosis for the applicant's wife, no new information or evidence was submitted in the motion to reconsider. Counsel has not established that the AAO decision of November 14, 2006 was in error.

8 C.F.R. § 103.5(a) provides, 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 reopen and reconsider were thoroughly addressed in the previous AAO decision, and counsel failed to establish any legal error in the AAO or District Director's decisions.

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

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