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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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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 29 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of of the Foreign Residence Requirement under Section 212(e)
of the Immigration and Nationality Act; 8 U.S.C. § 1182(e).

ON BEHALF OF APPLICANT:

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 Director, California Service Center and the subsequent appeal was dismissed by the AAO. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be dismissed. The waiver application is denied.

The record reflects that the applicant is a native and citizen of Uzbekistan who was admitted to the United States in J1 nonimmigrant exchange status on August 24, 2002 to participate in a program funded by the U.S. Department of Agriculture. He is thus subject to the two-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e) based on government financing. The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen spouse would suffer exceptional hardship if she moved to Uzbekistan temporarily with the applicant and in the alternative, if she remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Uzbekistan.

The director determined that the applicant failed to establish that his U.S. citizen spouse would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Uzbekistan. *Director's Decision*, dated July 10, 2008. The application was denied accordingly.

On appeal, the AAO concurred with the director that exceptional hardship to a qualifying relative had not been established, as required by section 212(e) of the Act. Consequently, the appeal was dismissed. *Decision of the AAO*, dated December 29, 2008.

On January 28, 2009, counsel for the applicant filed the Form I-290B, Notice of Appeal or Motion to the Administrative Appeals Office (Form I-290B). On the Form I-290B, in Part 2, counsel for the applicant indicated that they were filing a motion to reconsider by marking box E. *Form I-290B*, dated January 28, 2009.

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).

Counsel and/or the applicant have failed to establish that the decision of the AAO was based on an incorrect application of law or Service policy, based on the evidence of record at the time of the decision. As no additional evidence is presented on motion to reconsider to overcome the decision of the AAO, the appeal will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4).

The burden of proving eligibility for a waiver under section 212(e) of the Act rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that in the present case, the applicant has met his burden.

ORDER: The motion is dismissed.