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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JAN 11 2010**

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:



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).

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed and the previous decisions of the Director and the AAO will be affirmed. The application for waiver of grounds of excludability is denied.

The AAO notes that on motion, the applicant states that a brief and/or additional evidence is forthcoming. *See Form I-290B*, filed August 28, 2007. The record contains no evidence that a brief or additional evidence was ever filed; therefore, the record is considered complete.

The applicant is a native and citizen of the Dominican Republic who entered the United States in July 1994. On August 19, 2002, Protocol Promotions, Inc., filed a Petition for Alien Worker (Form I-140) on behalf of the applicant. On November 25, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On November 21, 2003, the applicant's Form I-140 was approved. On September 20, 2005, the Director, New York, denied the applicant's Form I-485. On October 13, 2005, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-601). On the same day, the applicant filed a motion to reopen the Director's decision on his Form I-485. On March 1, 2006, the Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to establish that he had a qualifying relative for a section 212(i) waiver. On March 31, 2006, the applicant, through counsel, filed an appeal of the Director's decision with the AAO. On July 27, 2007, the AAO dismissed the applicant's appeal. On August 28, 2007, the applicant filed a motion to reconsider the AAO's decision.

In the present motion to reconsider, the applicant asserts that "[t]he period of 10 years for the misrepresentation had not been considered in the decision issued July 27, 2007." Additionally, the applicant cites various cases in support of his claim that "[t]here is no basis to make a strict application when the fraud qualified is beyond 10 years of completion and failure to weigh all family factors is reversible." The AAO notes that under 212(a)(6)(C)(i) of the Act, there is no exception for material misrepresentation occurring 10 years prior to the filing of the applicant's waiver application. Additionally, the AAO notes that the majority of the cases cited by the applicant regard whether a waiver statute can be applied retroactively, and are not germane to the present case. The applicant claims that hardship to children "must be legally considered." The AAO notes that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. Additionally, the AAO notes that since the applicant is not the spouse or son of a United States citizen or of a lawful permanent resident of the United States, he is ineligible for a waiver of inadmissibility under section 212(i) of the Act.

The AAO notes that the issues raised by the applicant were previously raised in the initial appeal and those issues were addressed by the AAO. The applicant did not identify any legal errors in the prior AAO or Director's decisions, and aside from citing some cases, no new information or evidence was

submitted in the motion to reconsider. The applicant has not established that the AAO decision of July 27, 2007 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 the applicant's motion to reconsider were thoroughly addressed in the previous AAO decision, and the applicant failed to establish any legal error in the AAO or Director's decisions.

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

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