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

U.S. Citizenship
and Immigration
Services

[redacted]

H2

Date: AUG 15 2012 Office: BUFFALO FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Buffalo, New York. On April 7, 2010, the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be dismissed, the previous decision of the AAO will be affirmed, and the application will remain denied.

The applicant is a native and citizen of Ecuador who was found by the district director to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, the AAO agreed with the district director's determination that the applicant was inadmissible for having been convicted of crimes involving moral turpitude, and that the applicant failed to establish extreme hardship to a qualifying relative. The applicant filed the instant motion.

As will be discussed, the applicant has failed to establish the requirements for a motion to reopen or reconsider. Accordingly, the motion will be dismissed.

The regulation at 8 C.F.R. § 103.5(a) governs motions and states, in pertinent part:

> (2) Requirements for motion to reopen. 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. . . .
>
> . . .
>
> (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.

On motion, counsel challenges the finding that the applicant failed to establish extreme hardship to a qualifying relative. Counsel asserts that the applicant's wife has lived in the United States her entire life and her immediate family members (her mother, sons, grandchildren, and stepsiblings) live here. Counsel contends that the applicant's mother-in-law plans to have an operation for an abdominal aneurysm, and the applicant's wife wants to assist in her mother's recovery. Counsel asserts that the AAO failed to give any weight to the fact that the applicant's wife lacks ties to Ecuador. Counsel, citing the U.S. Department of State report on Ecuador, contends that the applicant's wife will experience extreme hardship in Ecuador due to the prevalence of violent crime, and discrimination and violence committed against women and Afro-Ecuadorians, of which the applicant's wife would likely endure since she is a black woman. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2009: Ecuador* (March 11, 2010). Counsel asserts that the applicant's wife, who earned $25,580 in 2009, will experience extreme hardship in remaining in the United States and separated from her husband because the applicant

earned $31,894 in 2009 and is now the primary wage earner. Counsel argues that due to the specialized field in which the applicant's wife works, it will be difficult for her to obtain a job in Ecuador which provides health benefits.

Generally, a new fact is evidence that was not available and could not have been discovered or presented in the previous proceeding. Counsel's submission does not qualify as a motion to reopen as no new facts are asserted which, if proved, would establish extreme hardship to a qualifying relative. Counsel already claimed on appeal that the applicant's spouse would experience extreme hardship due to lack of ties to Ecuador, country conditions in Ecuador, separation from family members in the United States, having to leave her job, and the applicant's having no means of earning a living. These do not constitute "new" facts on motion. Counsel argues that the applicant's wife will not find a job in Ecuador because she is black, and cites a U.S. Department of State report in support of her argument. However, counsel's argument could have been presented in the previous proceeding, as the U.S. Department of State report dated March 6, 2007, which was submitted on appeal, discussed discrimination against Afro-Ecuadorians and women. As counsel previously argued on appeal that the applicant's wife would have difficulty obtaining a job due to her gender, this is not a "new" fact. The applicant's wife's work in weatherizing is not a "new" fact which could not have been discovered or presented in the previous proceeding.

Counsel cites a medical record dated April 23, 2010, and contends that the applicant's mother-in-law's requires surgery and the applicant's wife wants to be present in the United States to assist with her mother's recovery. However, the medical record, a transthoracic echocardiogram, merely described examination results. It does not state that the applicant's mother-in-law requires surgery. Counsel asserts that since the applicant has become the primary wage earner the applicant's wife will experience extreme hardship without the applicant's income. Nevertheless, the applicant has not provided any evidence on motion in which to establish that his wife's income is not enough for her to support herself. The AAO had already determined on appeal that the applicant's spouse would not suffer financial hardship in remaining in the United States. In sum, counsel has not asserted any new facts, supported by adequate evidence, which, if proved, would establish extreme hardship to a qualifying relative.

Counsel has not met the requirements for a motion to reconsider. As previously stated, 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 U.S. Citizenship and Immigration (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. *See Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991). Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

The present motion to reconsider does not allege that the issues, as raised on appeal, involved the application of precedent to a novel situation, or that there is a new precedent or a change in law that affects the AAO's prior decision. Instead, the petitioner generally reiterates prior arguments that are

based on the same factual record. As noted above, a motion to reconsider must include specific allegations as to how the AAO erred as a matter of fact or law in its prior decision, and it must be supported by pertinent legal authority. 8 C.F.R. § 103.5(a)(3); *Matter of O-S-G-*, 24 I&N Dec. at 58-60. The present motion does not establish that the AAO's prior decision was in error, and it does not establish new facts warranted reopening that decision.

As previously stated, a motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Accordingly, the applicant's motion to reopen and reconsider is dismissed.

ORDER: The motion is dismissed.