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

U.S. Citizenship and Immigration Services

H2

[redacted]

DATE: AUG 1 7 2012 OFFICE: COLUMBUS, OHIO 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 with the field office or service center that originally decided your case by filing a 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 Field Office Director, Columbus, Ohio. The matter came before the Administrative Appeals Office (AAO) on appeal and the appeal was dismissed. The matter is again before the AAO on motion to reconsider. The motion will be denied.

The applicant is a native and citizen of Jordan who was found to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse and children.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated November 26, 2007.

On appeal, the AAO concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, that he is thus statutorily ineligible for a waiver under section 212(h) of the Act, and accordingly no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Consequently, the appeal was dismissed. *See Decision of the Administrative Appeals Office*, dated August 18, 2010.

On September 16, 2010 counsel for the applicant filed Form I-290B, Notice of Appeal or Motion to the Administrative Appeals Office. On the Form I-290B, in Part 2, counsel indicated that he is filing a motion to reconsider by marking box F. *See Form I-290B*, received September 16, 2010. Counsel additionally entitles a brief attached thereto, "Motion to Reconsider." *See Counsel's "Motion to Reconsider,"* dated September 13, 2010.

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 Services (USCIS) policy. A motion to reconsider a decision on an application 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).

Counsel contends on motion to reconsider that the "director" erred by "not considering" country conditions in Jordan or extreme hardship to the applicant's qualifying relatives were they to relocate to Jordan. *See Form I-290B*, received September 16, 2010. In its decision on appeal, the AAO specifically notes: "To establish that relocation would result in extreme hardship for the applicant's family, counsel asserts that the applicant's spouse fears returning to the Israeli-occupied West Bank.... Counsel further asserts that the applicant's children ... are unfamiliar with the culture of Palestine or Kuwait. The applicant, however, is a citizen of Jordan and must establish that his qualifying relatives would experience extreme hardship in Jordan.... [C]ounsel has not addressed the impacts of relocating to Jordan on the applicant's family.... Accordingly, the applicant has failed to establish that his spouse or children would experience extreme hardship if they were to relocate with him to Jordan." *See Decision of the Administrative*

Appeals Office, dated August 18, 2010. The AAO was unable to consider on appeal country conditions in Jordan or any hardship the applicant's spouse and children would face upon relocation thereto, because no such assertions were made by the applicant through counsel and no country conditions evidence for Jordan had been submitted for the record.

Counsel contends on motion to reconsider that the "director" erred by "not considering" separation-based extreme hardship to the applicant's qualifying relatives including "medical issues of the three U.S. citizen children," and "did not take into account the extreme hardship to the recently born U.S. citizen daughter of the applicant." *See Form I-290B*, received September 16, 2010. The AAO's decision on appeal shows clearly that all assertions of separation-related hardship were addressed. The AAO did not, however, address medical issues concerning the applicant's three eldest children or hardship to the youngest as no such assertions were made by the applicant through counsel and no related documentary evidence had been submitted for the record. *See Decision of the Administrative Appeals Office,* dated August 18, 2010.

Counsel contends on motion to reconsider that "the Service dismissed the relevance of Jordan as applied to Mr. [redacted] family," and that counsel is "hereby submitting information clarifying the extreme and undue hardship which will be suffered by Mrs. [redacted] and the couple's four U.S. citizen children if they relocate with Mr. [redacted] to Jordan." *See Counsel's "Motion to Reconsider,"* dated September 13, 2010. Counsel adds: "Also included in this information is documentation proving the extreme and undue emotional, financial and health hardship that will be suffered by Mr. [redacted] entire family in the United States if he is removed to Jordan." *Id.*

As previously noted, a motion to reconsider a decision on an application must, when filed, 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). Counsel has failed to establish that the AAO's decision on appeal was incorrect based on the evidence of record at the time of its initial decision. Counsel has additionally failed to demonstrate that his stated reasons for reconsideration are supported by any pertinent precedent decisions to establish that the AAO's decision on appeal was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." Counsel has failed to include with the motion the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C).

The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements shall be dismissed. Therefore, because the instant motion does not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C) and the applicant has not met the requirements for a motion to reconsider under 8 C.F.R. §§ 103.5(a)(3), the motion must be denied.

ORDER: The motion is denied.