



**U.S. Citizenship
and Immigration
Services**

(b)(6)

Date: **APR 30 2013**

Office: NEWARK, NJ

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. An appeal of the AAO's decision was rejected. The matter is now before the AAO on motion. The motion will be dismissed.

The record reflects that the applicant is a native and citizen of Uruguay who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) for having committed crimes involving moral turpitude. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act in order to reside with his wife and stepson in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. On appeal, the AAO found that although the applicant established that his wife would suffer extreme hardship if she decided to remain in the United States, the applicant did not establish that his wife would suffer extreme hardship upon relocation to Uruguay. The AAO dismissed the appeal accordingly. Counsel attempted to file an appeal of the AAO's decision. The AAO rejected the appeal as there is no appeal available of an AAO decision.

Counsel now files a motion to reopen and reconsider contending that it was merely a "technical issue that the 'Appeal' box was checked off instead of the 'Motion' box." Counsel asserts that the brief he previously filed should have been considered on the merits.

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. 8 C.F.R. § 103.5(a)(2). 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).

Here, the applicant's filing does not meet the requirements of a motion. Counsel merely contends that the wrong box was checked; however, he has not stated any new facts to be proved in the reopened proceedings and there is no new evidence in support of the motion. Therefore, the motion does not meet the requirements of a motion to reopen. In addition, the motion does not meet the requirements of a motion to reconsider. Counsel has not supported his motion with any precedent decisions to establish that the AAO's previous decision rejecting the appeal was either based on an incorrect application of law or Service policy. As explained on the cover sheet for the AAO decision of May 19, 2010, an applicant who believes the AAO incorrectly applied the law or who wishes to submit additional information may file a motion to reconsider or a motion to reopen. 8 C.F.R. § 103.5(a)(1)(ii). There is nothing in the regulations allowing for an administrative appeal of an AAO decision.

The AAO notes that even if we considered the applicant's brief that was previously submitted with the appeal, the AAO would stand by its initial decision. Counsel's previously filed brief incorrectly asserts that the government is forcing the applicant's wife to live in a foreign country. Whether or not a spouse decides to relocate to another country to avoid the hardship of separation is a matter of choice and not the result of inadmissibility. *See, e.g., Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994); *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). In addition, counsel's brief contends the AAO cited outdated literature and over-relied on general facts involving a foreigner's employment opportunities in Uruguay. The documents cited to in the AAO decision were submitted by the applicant with the Form I-601 and again with the initial appeal. No additional country condition information has been submitted. Counsel erroneously places the burden on the government, when, in fact, the Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act. Furthermore, the AAO notes that although counsel submitted some additional evidence with his appeal,¹ there was insufficient new evidence to show that the applicant's wife would suffer extreme hardship if she relocated to Uruguay.

The motion does not meet the applicable requirements of a motion. Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed.

¹ Counsel submitted the following documents in support of the appeal: the applicant's wife's affidavit from 2006, which was already in the record; the applicant's wife's 2009 W-2 form (previous W-2 forms and tax records were already in the record); a copy of a May 2010 pay stub (previous pay stubs were already in the record); the applicant's son's report card; and updated country conditions reports. Moreover, the AAO notes that counsel incorrectly asserts in his brief that the applicant's wife is a native of Honduras, instead of El Salvador. Counsel also asserts in his brief that the applicant's son is a U.S. citizen, but does not provide a copy of his birth certificate despite the fact that the field office director explicitly stated in her decision that the record did not contain a birth certificate of the applicant's stepson and that there was no evidence in the record addressing his status in the United States.