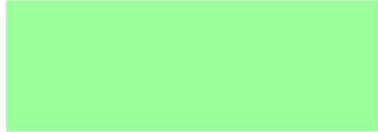




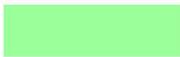
U.S. Citizenship  
and Immigration  
Services

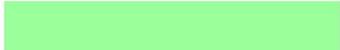
(b)(6)



DATE: AUG 26 2014

OFFICE: LOS ANGELES, CALIFORNIA

File: 

IN RE: 

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, California and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The application is now before the AAO on motion. The motion will be dismissed.

The applicant is a native and citizen of Guatemala who was found 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 committed a crime 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 her lawful permanent resident father, her U.S. citizen spouse, and her U.S. citizen child.

In a decision, dated March 3, 2010, 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.

On appeal, counsel asserted that the applicant is a person of good moral character who has never been convicted of a serious crime and that her lawful permanent resident father would suffer extreme hardship if a waiver was not granted.

In a decision, dated December 12, 2012, we affirmed the field office director's finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude based on the applicant's convictions in 1992, 1997, and 2000 for theft under California Penal Code sections 484(A) and 666. We recognized that the applicant's 73 year old father suffered from diabetes, hypertension, hypercholesterolemia, and blindness, but the record failed to show that the applicant ever served as her father's primary caregiver; that the applicant's father was dependent upon the applicant for physical, emotional, or economic support; or that the applicant's father was unable to continue living independently or under his current circumstances in the applicant's absence. We also stated that hardship to the applicant's father as a result of relocating to Guatemala was not addressed on appeal and concluded that the applicant failed to demonstrate extreme hardship to a qualifying relative. The appeal was dismissed accordingly.

On motion, filed on January 10, 2013 and received by the AAO on April 10, 2014, counsel asserts that the applicant's father will suffer extreme hardship upon separation from the applicant because he suffers from severe medical conditions and needs the applicant to move to Rhode Island to help him with his daily activities. Counsel also states that the applicant's father cannot relocate to Guatemala because he will lose his medical insurance and not be able to receive care for his conditions in Guatemala. Counsel submits additional documentation in regards to the applicant's father's medical condition.

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).

The applicant's motion fails to meet the requirements under 8 C.F.R. § 103.5(a)(2) and (3). The motion does not state any new facts to be proved in the reopened proceedings nor does it establish that the decision was based on an incorrect application of law or Service policy.

As stated above, counsel asserts that the applicant's father will suffer extreme hardship upon separation from the applicant because he suffers from severe medical conditions and needs the applicant to move to Rhode Island to help him with his daily activities. The record indicates that the applicant's father is 75 years old, can no longer work, and lives in Rhode Island. The record indicates that he suffers from moderately controlled diabetes, diabetic retinopathy, occasional hypoglycemia, and glaucoma. However, the motion does not state any new facts to be proved in regards to hardship to the applicant's father. All of the medical documentation in the record is dated 2009 and no current diagnoses of the applicant's father's condition have been provided. All of the hardship claimed on motion, is hardship that was claimed on appeal. Thus, the applicant's motion does not meet the requirements of a motion to reopen under 8 C.F.R. § 103.5(a)(2).

The record on motion also fails to establish any reasons for reconsideration based on the incorrect application of law or Service policy. On appeal, we indicate that the record failed to show the impact the father's medical conditions were having on the applicant's father's daily activities and quality of life. The record did not indicate the extent of the medical follow up care the applicant's father required as a result of these conditions. The record did not establish that he required daily care as a result of his conditions. Moreover, in the event the applicant's father did require care to maintain his wellbeing, the record did not indicate that the applicant was the only person able and willing to provide this care. Furthermore, the record did not provide documentation indicating the applicant's father's financial situation and if his father did require care, that he would not be in a position to hire someone to help care for him or if there are other family members that could help with his care. On appeal and in regards to hardship upon relocation, the record did not indicate that the applicant's father would not be able to receive the medical care he needs in Guatemala or would not be able to afford medical care in Guatemala. None of these deficiencies in the record were addressed on motion. Again, the motion fails to establish any reasons for reconsideration based on the incorrect application of law or Service policy.

The applicant's motion fails to meet the requirements under 8 C.F.R. § 103.5(a)(2) and (3). Accordingly, the motion will be dismissed.

**ORDER:** The motion is dismissed.