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U.S. Citizenship
and Immigration
Services

HB

MAR 23 2005

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

IN RE:

[Redacted]

APPLICATION:

Application for Waiver of of the Foreign Residence Requirement under Section 212(e)
of the Immigration and Nationality Act; 8 U.S.C. § 1182(e).

ON BEHALF OF APPLICANT:

[Redacted]

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.

Handwritten signature of Robert P. Wiemann in black ink.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Vermont Service Center, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is before the AAO on a motion to reconsider. The motion will be dismissed, and the order dismissing the appeal will be affirmed.

The record reflects that the applicant is a native and citizen of Nigeria. He was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on August 29, 1996 to participate in graduate medical education or training. The applicant is subject to the two-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e). The record reflects that the applicant is married to a native and citizen of Nigeria who was admitted to the United States on August 29, 1996 as the spouse of a Nonimmigrant Exchange Visitor. The applicant and his wife have a United States Citizen (USC) child. The applicant seeks a waiver of his two-year residence requirement in Nigeria, based on the claim that his USC child would experience exceptional hardship if she moved to Nigeria with the applicant.

The Director concluded that the evidence submitted failed to establish that the applicant's departure from the United States would impose exceptional hardship upon his USC child and denied the application accordingly. The AAO affirmed that decision on appeal.

On motion, counsel contends that the AAO decision was based on incorrect legal and factual conclusions

The AAO notes that the record does not appear to contain evidence that the required fee was paid with the motion.

Pursuant to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence.

Pursuant to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration; and be supported by any pertinent precedent decisions.

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

The issues in this matter were thoroughly discussed by the Director and the AAO in their prior decisions. Because counsel did not identify or analyze the specific legal and factual conclusions at issue, the motion will be dismissed.

ORDER: The motion is dismissed. The order of May 21, 2003 dismissing the appeal is affirmed.