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



U.S. Citizenship
and Immigration
Services

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H4

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date **OCT 06 2010**

IN RE: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after
Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

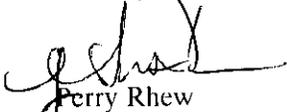
[REDACTED]

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 Director, Vermont Service Center, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen or reconsider. The motion will be granted. The AAO's previous order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Guyana who, on January 4, 2000, appeared at the Miami, Florida International Airport. The applicant presented a photo-substituted Guyanese passport with Canadian landed immigrant papers bearing the name "[REDACTED]." The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for attempting to obtain admission to the United States by fraud and for being an immigrant without valid documentation. The applicant was placed into secondary inspection, at which time he indicated a fear of returning to his home country. The applicant was scheduled for a credible fear interview. On January 20, 2000, the applicant was placed into immigration proceedings pursuant to credible fear interview procedures. On January 19, 2001, the immigration judge denied the applicant's asylum and withholding of removal applications, making a negative credibility finding against the applicant. The immigration judge then ordered the applicant removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA).

On [REDACTED] the applicant married his U.S. citizen spouse, [REDACTED]. On October 15, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed on his behalf by [REDACTED]. On December 19, 2002, the BIA dismissed the appeal. The applicant filed a motion to reopen with the BIA. On December 9, 2003, the BIA denied the applicant's motion to reopen. On March 11, 2003, a warrant for the applicant's removal was issued. On June 12, 2006, the applicant filed the Form I-212. On March 13, 2009, the applicant filed a second motion to reopen with the BIA. On October 19, 2009 the BIA dismissed the applicant's second motion to reopen. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside in the United States with his U.S. citizen spouse and daughter.

The director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Director's Decision* dated February 22, 2008.

On appeal, counsel contended that the positive factors outweighed the negative factors in the applicant's case. *See Counsel's Memo*, dated April 15, 2008. In support of his contentions, counsel submitted the referenced memo, affidavits and letters from the applicant, [REDACTED], a family and friends, as well as medical and psychological documentation. In its February 2, 2009 decision, the AAO found that the favorable factors were outweighed by the unfavorable factors and affirmed the director's decision to deny the application.

In his motion to reconsider, counsel contends that the denial of the Form I-212 is in error because the applicant submitted evidence to support a finding that there will be extreme, exceptional and unusual

hardship to the applicant's spouse.¹ *See Memorandum in Support of Motion to Reopen*, dated February 27, 2009. In support of his contentions, counsel submits the referenced memorandum, affidavits from the applicant's spouse, purported mother and sister, medical documentation and copies of documentation already in the record. The entire record was reviewed in rendering a decision in this case.

8 C.F.R. § 103.5(a) provides, 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. A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

- a. The requested evidence was not material to the issue of eligibility;
- b. The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
- c. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

(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.

In his motion to reopen, counsel contends that additional corroborative documentation is submitted in order to further evidence that there will be serious consequences to the applicant's spouse and daughter should the applicant be removed from the United States. Counsel contends that he submits evidence that the applicant's spouse has continued to receive treatment for her depression and evidence that the

¹ The AAO notes that counsel incorrectly refers to the application in his memo as a Form I-601. The AAO also finds that counsel refers to the incorrect standard for permission to reapply for admission. Permission to reapply for admission requires an applicant to establish that he or she warrants a favorable exercise of discretion. Hardship to the applicant and his family members is just one factor to be weighed in the adjudication of the application.

applicant's spouse's depression will be exacerbated tremendously by the applicant's departure. *See Memorandum in Support of Motion to Reopen*. The AAO finds counsel's contention unpersuasive. First, the psychological documentation submitted by counsel consists solely of the same documentation submitted on appeal. Second, the medical documentation submitted by counsel consists of documentation in regard to normal results for regular gynecological and fertility visits, an order for a brain scan for unknown reasons, medical documentation indicating that the applicant's spouse underwent a full abortion, suffered from the flu and some nausea, and had a high cholesterol result. The evidence submitted by counsel is not evidence of new facts that have developed since the AAO's decision and does not establish that the AAO's prior decision should be withdrawn.

In his motion to reopen, counsel contends that the applicant's mother has been known by both [REDACTED] and [REDACTED].² Counsel contends that the applicant's mother has serious health issues. *See Memorandum in Support of Motion to Reopen*. Counsel's contentions are unpersuasive. First, the only evidence counsel submits to support his contention that [REDACTED] and [REDACTED] are the same person is an affidavit from the applicant's mother stating that she has been known by both names. There is no evidence to establish that the applicant's mother has utilized both names on other official documents. The AAO finds that the evidence before it is insufficient to establish the necessary relationship, especially since there is no explanation as to why all of the applicant's mother's legal documents refer to her as [REDACTED]. Additionally there is no evidence to establish the relationship between the applicant's purported mother and his purported sister.³ This evidence is also not evidence of new facts that have developed since the AAO's decision and does not establish that the AAO's prior decision should be withdrawn.

Counsel fails to make any argument or provide pertinent precedent decisions to support a finding that the AAO incorrectly applied the law. Accordingly, the AAO finds that counsel failed to state reasons for reconsideration that are supported by any pertinent precedent decisions establishing that the AAO's decision was based on an incorrect application of law.

The petitioner's evidence submitted on motion fails to establish that the director's and the AAO's decisions to deny the application were made in error. As in all proceedings, the applicant bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion is granted. The AAO's decision, dated February 2, 2009, is affirmed. The application is denied.

² The AAO notes that counsel's contention that the applicant's mother is not an after-acquired equity is unpersuasive. The applicant's mother is an after-acquired equity because she became a lawful permanent resident after the applicant had been placed into immigration proceedings.

³ The AAO notes that the record contains an affidavit from the applicant's purported sister, but at no time has the applicant submitted a birth certificate for his sister.