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

HLS



DATE: **AUG 01 2012**

OFFICE: PHILADELPHIA, PA

File:

IN RE:

Applicant:

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

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 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 District Director, Philadelphia, Pennsylvania. 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 reopen and reconsider. The motion will be denied.

The applicant is a native and citizen of India who was found to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and children.

The District Director concluded that based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative. The District Director further determined that on account of the applicant's "repeated dishonesty" with USCIS, the negative factors would outweigh the positive even had extreme hardship been established. The application was denied accordingly. *See Decision of the District Director*, dated May 26, 2006.

On appeal, the AAO concluded that extreme hardship to the applicant's qualifying relative spouse had been established in the event of separation, but that extreme hardship had not been established in the event of relocation by the applicant's spouse to India. The AAO concurred with the District Director that extreme hardship to a qualifying relative had not been established. Consequently, the appeal was dismissed. *See Decision of the Administrative Appeals Office*, dated May 11, 2010.

On June 10, 2010 [REDACTED] 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 she was filing a motion to reopen and a motion to reconsider by marking box F. *See Form I-290B*, dated June 10, 2010.

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). Counsel failed to state any new facts to be proved in the event the proceeding is reopened. No affidavits supporting the motion or presenting any new facts have been submitted, and counsel instead submits a physician's letter from 2004, an undated psychological evaluation, and internet printouts concerning India that date back to April 10, 2006. While counsel makes no statements concerning the new facts to be proved in reopened proceedings, she asserts in her cover letter, dated June 10, 2010, that she "will be submitting a report prepared by an expert on Indian affairs that shall provide further foundation for the basis of this Motion to Reopen." The AAO notes that no such report has been received and no foundation or basis for the motion to reopen has been established.

Further addressing such "report," [REDACTED] asserts in a letter dated September 9, 2010 which was accompanied by a properly executed Form G-28, that his firm represents the applicant and is "currently in the process of preparing an expert analysis report. Our office as well as the outside agency we are working with to supplement [REDACTED] original filing require additional time. We respectfully request additional time...."

In an undated letter received by the Administrative Appeals Office on December 15, 2010, [REDACTED] Political Asylum Research and Documentation Service (PARDS) writes to [REDACTED]: "we commenced a diligent search for documentation and a country-specific expert who is qualified, ready, willing and able to accept, review, critique, assess the meritorious nature of the claim, support and contribute to same given your current filing deadline, hearing date and time. Please note that each of those we approached have expressed concern regarding your current filing deadline, hearing date and time. For this reason we recommend that you petition the court for a modest length continuance enabling them to amend their schedules and contribute to the case, regretting the resultant inconvenience to the court, trial attorney, your client, and you as the attorney of record." In a letter dated February 1, 2011, counsel from [REDACTED] "respectfully ask for an additional ninety (90) days to present additional evidence." The AAO notes that no country-specific expert report has ever been received from [REDACTED] and no foundation or basis for the motion to reopen has been established.

In a letter dated April 13, 2010 and accompanied by a properly executed Form G-28, [REDACTED] indicates that she is the applicant's "new attorney of record." [REDACTED] writes: "On February 1, 2011, Applicant's previous counsel requested additional time (90 days) to present additional evidence. We are uncertain as to whether previous counsel submitted said additional evidence or not and if a decision has been rendered." The AAO notes that more than two years have passed since the filing of Form I-290B, during which neither the applicant's initial nor subsequent counsel have submitted any country-specific expert report purportedly intended to establish foundation or basis for the applicant's motion to reopen and 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 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 has failed to assert or establish that the AAO's decision was incorrect based on the evidence of record at the time of the initial decision.

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 reopen or motion to reconsider under 8 C.F.R. §§ 103.5(a)(2)-(3), the motion must be denied.

ORDER: The motion is denied.