



U.S. Citizenship
and Immigration
Services

[REDACTED]

H5

DATE: **DEC 06 2012** OFFICE: PITTSBURGH

[REDACTED]

IN RE:

[REDACTED]

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

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 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, Pittsburgh, Pennsylvania. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a motion to reopen and reconsider. The motion will be dismissed. The underlying application remains denied.

The applicant is a native and citizen of the Czech Republic 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 procuring admission to the United States through fraud or 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 reside in the United States with her U.S. citizen spouse.

The Field Office Director determined that the applicant had established that her husband would experience extreme hardship if he were to relocate to the Czech Republic but not if he were to remain in the United States separated from the applicant, and she denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated November 4, 2008.

On appeal, the AAO agreed that the applicant failed to demonstrate her husband would experience extreme hardship based on separation. The appeal was dismissed. *See Decision of the Administrative Appeals Office*, dated April 21, 2011.

In response, counsel filed an appeal and a motion to reopen and a motion to reconsider the decision of the Administrative Appeals Office. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received May 12, 2011.

The regulations state in pertinent part at 8 C.F.R. § 103.5(a):

....

(2) Requirements for motion to reopen. 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.

....

(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.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed

The motion to reopen and reconsider does not meet the requirements set forth in 8 C.F.R. § 103.5(a). While counsel asserts that the AAO did not correctly apply the law in analyzing the psychological and financial impact separation would have on the applicant's spouse, the motion does not include pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. Furthermore, counsel did not submit affidavits or evidence to support the new facts presented. Counsel states that a brief and additional evidence would be submitted in thirty days; however, neither were submitted. The motion to reopen and reconsider the AAO decision shall therefore be dismissed.

The AAO notes further that the regulation at 8 C.F.R. §103.5(a)(1)(iii)(C) requires that motions to reopen and motions to reconsider 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." The present motion does not contain 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 must be dismissed. Because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

ORDER: The motion is dismissed. The underlying application remains denied.