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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

[redacted]

Date: Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: JUL 0 5 2012 [redacted]

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

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 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,

Michael Dumoway

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Brazil and father of two U.S. citizens. The applicant was found to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act) for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility to reside in the United States with his family.

In her decision, dated April 1, 2006, the Director concluded that the applicant failed to establish extreme hardship to his U.S. citizen child and denied the application accordingly.

In a decision, dated July 7, 2009, the AAO, reviewing the applicant's I-601 on appeal, concurred with the Director that the applicant had not established that his child would suffer extreme hardship as a result of his inadmissibility. Consequently, the appeal was dismissed.

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).

In a memorandum, dated August 5, 2009, counsel states that the applicant now has two U.S. citizen children and that his children would suffer extreme hardship as a result of the applicant's inadmissibility.

Although the documentation in this matter shows that there is a new fact to be considered in reopening the matter, the motion shall be dismissed for failing to meet the requirement set forth in 8 C.F.R. § 103.5(a)(1)(iii). 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 8 C.F.R. § 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." In this matter, the motion does not contain the statement required by this regulation. The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, 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 be dismissed for this reason.

ORDER: The motion will be dismissed, the proceedings will not be reopened or reconsidered, and the prior decision of the AAO will not be disturbed.