



U.S. Citizenship
and Immigration
Services

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DATE: **JUN 14 2012**

OFFICE: TAMPA



IN RE



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:



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 Acting District Director, Tampa, Florida. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO), and this matter is now before the AAO on a motion to reopen or reconsider. The motion will be dismissed.

The applicant is a native and citizen of Nigeria who attempted to enter the United States on June 13, 1998, by using a photo-substituted visa. The applicant was ordered removed from the United States on June 13, 1998 and removed on the following day. The applicant subsequently entered the United States on June 2, 2002. The Acting District Director found the applicant to be inadmissible to the United States 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 having attempted to procure entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to remain in the United States and reside with his U.S. citizen spouse and children.

The Acting District Director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the Form I-601 application for a waiver accordingly. *Decision of the Acting District Director*, dated June 22, 2006. On appeal, the AAO found that the applicant failed to identify an erroneous conclusion of law or statement of fact and summarily dismissed his appeal. *See Decision of the AAO*, dated January 8, 2010.

In his motion to reopen and reconsider, counsel for the applicant asserts that the applicant's separation from her family would result in extreme hardship for her U.S. citizen spouse and children.

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 for the applicant states that the applicant's spouse will suffer financially if separated from his spouse and his family will suffer in their health and safety if they reside in Nigeria. The record contains background information concerning Nigeria and letters of support.

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). The applicant does not refer to any pertinent precedent decision or specify how the AAO's decision to summarily dismiss his appeal relied upon an incorrect application of law or Service policy.

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." In this matter, the 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.

The AAO finds that the applicant's motion fails to identify any erroneous conclusion of law or policy. The applicant also failed to submit a statement as required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The motion is therefore dismissed¹.

ORDER: The motion to reopen and reconsider is dismissed.

¹ As noted in the Acting District Director's decision of June 22, 2006, this applicant requires a Form I-212 application, Permission to Reapply for Admission Into the United States After Deportation or Removal, because he is also inadmissible pursuant to section 212(a)(9)(A)(i) of the Act.