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



U.S. Citizenship  
and Immigration  
Services

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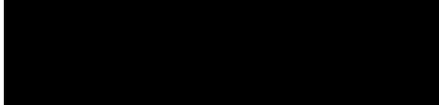


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DATE: **MAR 14 2012**

Office: PORTLAND, OR

File: 

IN RE: Applicant: 

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 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, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion 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 Field Office Director, Portland, Oregon. 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 Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) for presenting a border crossing card of another individual in an attempt to enter the United States in 1995. She is the wife of a lawful permanent resident and has two U.S. citizen daughters. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her LPR husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 9, 2009.

The AAO, reviewing the applicant's I-601 on appeal, concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established, as required by the Act. Consequently, the appeal was dismissed. *Decision of the AAO*, dated July 15, 2011.

In support of the instant motion, counsel for the applicant submits a brief, a statement from the qualifying spouse, letters from the applicant and qualifying relative's children and friends, a letter from the qualifying spouse's former employer and financial documentation. The entire record was reviewed and considered in rendering this decision.

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).

On the motion to reopen, counsel for the applicant asserts the applicant has provided additional evidence that her spouse will experience physical, emotional and financial hardship due to the applicant's inadmissibility. Counsel contends that if the qualifying spouse were to remain in the United States without the applicant, he would experience emotional, physical and financial hardships. Counsel indicates that the letters provided by the applicant's friends and family, support the assertions relating to such hardships. As the AAO noted in its previous decision, the applicant's children are not qualifying relatives, and as such, any hardship to them is only relevant to the extent that it creates hardship for a qualifying relative. Therefore, the additional letters provided detailing the hardships of the children are not relevant to the instant inquiry, unless such hardships specifically affect the qualifying spouse. The evidence does not establish that the children's hardships will affect

the qualifying spouse to an extent that may be considered extreme hardship. Further, the record also fails to provide sufficient detail regarding the emotional and physical hardships that the qualifying spouse would suffer upon separation.

On motion, a letter from the qualifying spouse's prior long-term employer was also submitted indicating that his position was discontinued. However, the record does not indicate whether the qualifying spouse has since found new employment or make any additional claims regarding hardships relating to his being laid off. Further, there is no current financial documentation regarding the qualifying spouse's income to support prior assertions regarding his inability to maintain two households. The AAO recognizes that the applicant's spouse will experience hardship as a result of separation from the applicant. However, the applicant has failed to provide sufficient evidence to demonstrate that any financial, physical or emotional hardships the qualifying spouse would experience would constitute hardship beyond the common results of removal or inadmissibility.

Counsel for the applicant also asserted on motion that the applicant is 60 years old, has limited contacts and limited employment opportunities in Mexico and that he would have a difficult time adjusting to life in Mexico. However, the evidence regarding such hardships was already evaluated in the prior AAO decision, and no new evidence was provided in the motion to reopen regarding the potential hardships upon relocation of the qualifying spouse. In addition, the record does not establish whether the qualifying spouse would face the same types of financial hardships, given the loss of his long-term employment in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. More specifically, the motion to reopen and reconsider failed to state new facts to be proved in the reopened proceedings and be supported by affidavits or other documentary evidence as required by 8 C.F.R. § 103.5(a)(2). Moreover, the motion also failed to establish that the prior decision of the AAO was incorrect based on the evidence of record at the time of the initial decision as per 8 C.F.R. § 103.5(a)(3).

In addition, 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)(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 also be dismissed for this reason.

Furthermore, motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to

reopen a proceeding bears a “heavy burden.” *INS v. Abudu*, 485 U.S. at 110. With the current motion, the petitioner has not met that burden.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

**ORDER:** The motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the Field Office Director and AAO will not be disturbed.