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



PUBLIC COPY



115

DATE: **MAY 10 2012**

OFFICE: COLUMBUS, OHIO

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 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 must 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, Columbus, Ohio and the subsequent appeal was dismissed by the AAO. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be dismissed.

The applicant is a native and citizen of The Gambia who was found 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 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 his U.S. citizen spouse.

The Field Office Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. See *Decision of the Field Office Director*, dated September 10, 2007.

On appeal, the AAO concurred with the Field Office 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 February 4, 2010.

In March 2010, counsel 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 he was filing a motion to reconsider by marking box E. See *Form I-290B*.

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). 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." A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Counsel's basis for the instant motion is that the AAO has erred in its factual analysis, has failed to consider the hardship factors relating to the applicant, and has erroneously determined that the record does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. See *Form I-290B* and *Brief in Support of Motion*. In support of the instant motion, counsel has submitted copies of documents previously submitted in support of hardship, including an undated physician letter from [REDACTED] and medical records from 2006, and affidavits from the applicant and his spouse, dated March 3, 2010. The motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). As such, the appeal will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4).

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The burden of proving eligibility for a waiver of inadmissibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that in the present case, the applicant has not met his burden.

ORDER: The motion to reconsider is dismissed.