

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H5

[REDACTED]

DATE: **MAY 23 2012** OFFICE: NEW YORK, NEW YORK

FILE [REDACTED]

IN RE: Applicant [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 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 District Director, New York, New York, denied the applicant's waiver request. The applicant appealed the District Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The applicant has filed a motion to reopen the AAO decision. The applicant's motion to reopen will be dismissed.

The record reflects that the applicant is a native and citizen of Pakistan who was found by the District Director 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 procuring entry to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130), filed by a U.S. citizen. The applicant does not contest the finding of inadmissibility. Rather, he 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 his U.S. Citizen spouse.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated April 17, 2008.

On appeal, the AAO concurred with the district director that extreme hardship to a qualifying relative had not been established. Consequently, the appeal was dismissed. *Decision of the AAO*, dated April 29, 2009.

On motion to reopen, counsel asserts that new documentary evidence clearly demonstrates that the applicant's spouse would suffer extreme psychological and financial hardship upon separation from the applicant as the spouse's psychological conditions have increased in severity, and the spouse's family members would be unable to support the spouse financially.

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. Therefore, because the instant motion does 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.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden. Accordingly, the motion will be dismissed.

ORDER: The motion to reopen is dismissed.