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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

DATE: **APR 19 2013** Office: ACCRA, GHANA

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:

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 in accordance with the instructions on 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,

Ron Rosenberg,  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Accra, Ghana. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be denied.

The applicant is a native and citizen of Nigeria. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having misrepresented material facts when applying for admission to the United States. He is married to a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The field office director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO found that the applicant had failed to establish that a qualifying relative would experience extreme hardship and denied the appeal. *AAO Decision*, June 21, 2012.

On motion, counsel for the applicant asserts that the AAO should have considered evidence of hardship to the applicant's son, that the AAO abused its discretion when it determined the record did not establish extreme hardship and that it should have considered a second psychological evaluation contained in the record. *Form I-290B*, dated July 19, 2012.

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: (1) 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 USCIS policy; and (2) 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).

Counsel's assertion that the applicant's son is experiencing hardship is not new, and it was previously explained that children are not qualifying relatives in this proceeding. Section 212(i) of the Act. Counsel's assertion that the AAO abused its discretion in denying the appeal is not an articulation of any new fact to establish, but simply contests the Chief's decision. Finally, there is no indication that the Chief failed to consider all evidence that was present in the record. Counsel's prior assertions of psychological hardship to the applicant's mother are not supported by the record currently and were not supported at the time of the AAO's decision. The applicant has not submitted any additional documentation, nor has the applicant clearly articulated any incorrect application of the statute in question or cited to any statutes or precedent cases to support counsel's assertion that the AAO incorrectly applied any law.

The motion fails as a motion to reopen because the applicant has not articulated any new facts to be established and did not submit any additional documentary evidence. The motion fails as a motion to

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reopen because it does not demonstrate how the Chief's decision was based on an incorrect application of law or that the decision was incorrect based on the evidence in the record at the time.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion will be dismissed.

**ORDER:** The motion is dismissed.