

(b)(6)

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 22 2013 Office: HO CHI MINH CITY, VIETNAM

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long, sweeping underline.

Ron Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ho Chi Minh City, Vietnam. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reconsider the AAO decision, which is now before the AAO. The motion will be dismissed.

The applicant is a native and citizen of Vietnam who 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). He is the son of a U.S. citizen and Lawful Permanent Resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Field Office Director concluded that the applicant had failed to establish that the applicant had a qualifying relative and was prima facie eligible for a waiver (Form I-601) and denied the application on August 6, 2010. The applicant submitted an appeal but failed to identify any erroneous conclusion of law or statement of fact in the Field Office Director's decision. The AAO dismissed the appeal accordingly.

On motion, counsel for the applicant asserts that the AAO made improper findings of law and fact which the applicant seeks to rectify. *Form I-290B*, received September 7, 2012. In a Brief in Support of Motion to Reconsider, counsel for the applicant alleges that the AAO made factual and legal errors in finding that the applicant was not prima facie eligible for a waiver because he had not established that he had a qualifying relative.

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).

In this case, the AAO notes that it did not make any finding with regard to the applicant's prima facie eligibility, and was simply stating the basis for denial by the Field Office Director. What the AAO determined was that the applicant had failed to identify any specific erroneous conclusion of law or fact for the appeal. In order to establish that the requirements for a motion to reconsider have been met, the applicant must assert that the decision of the AAO, not the decision of the Field Office Director, involved an erroneous application of law or policy. Counsel's motion largely addresses extreme hardship factors which should have been presented on appeal, and fails to address the AAO's finding. Counsel does not cite any precedent decisions to establish that the AAO's decision was based on an incorrect application of law or USCIS policy, nor does she articulate how the AAO's decision was incorrect at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Based on these findings the AAO concludes that the applicant's Form I-290B does not meet the criteria for a motion to reconsider and will be dismissed.

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.