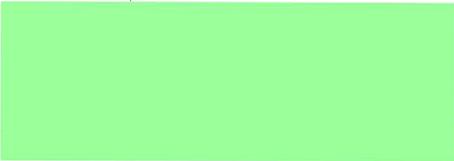




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 07 2013** OFFICE: ACCRA, GHANA FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Ron Rosenberg, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana. A subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be dismissed. The underlying application remains denied.

The applicant, a native and citizen of Senegal, was found inadmissible under Immigration and Nationality Act (the Act) § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for having made a material misrepresentation to gain a benefit under the Act. The applicant is the beneficiary of an approved I-130 petition filed on his behalf by his U.S. lawful permanent resident father. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) based on extreme hardship to his father.

On October 30, 2009, the Field Office Director concluded that the hardship that the applicant's U.S. lawful permanent resident father would suffer as a result of the applicant's inadmissibility did not rise to the level of extreme as required by the statute. The applicant filed an appeal of that decision and on February 23, 2012, the AAO summarily dismissed that appeal stating that the applicant failed to submit any brief or additional evidence on appeal.

The applicant filed Form I-290B, Notice of Appeal or Motion with the U.S. Consulate in Accra, Ghana. On Form I-290B, Part 2, the applicant indicated that that "I am filing a motion to reopen and a motion to reconsider a decision. My brief and/or additional evidence is attached." As explained on the cover sheet for the AAO decision, an applicant who believes the AAO incorrectly applied the law or who wishes to submit additional information may file a motion to reconsider or a motion to reopen. 8 C.F.R. § 103.5(a)(1)(ii). The applicant did not submit a brief or additional evidence in support of the motion, but rather provided a two paragraph explanation for the motion on the Form I-290B. In particular, the applicant states that he submitted a brief on appeal, but it must not have been received by the AAO and that the birth certificate, which was the cause of his inadmissibility, was not a fake. The applicant did not provide any documentation in support of his statements. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 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).

The motion does not meet the definition of a motion to reopen as it is not supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Additionally, the motion does not meet the definition of a motion to reconsider, as it does not establish that the previous decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet the criteria for a motion should be dismissed. A motion that meets the criteria should be granted, the application or petition reopened and a new decision rendered. 8 C.F.R. § 103.5(a)(4).

The AAO finds that the applicant's Form I-290B does not meet the criteria identified in 8 C.F.R. § 103.5(a)(2) and/or 8 C.F.R. § 103.5(a)(3). In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) 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. The motion is dismissed.

ORDER: The motion is dismissed.