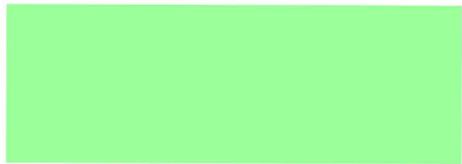




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: NOV 05 2013 Office: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Sections 212(h) and (i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and (i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Administrative Appeals Office (AAO) previously dismissed the applicant's appeal in a decision dated June 24, 2013. The matter is now before the AAO on motion. The motion will be dismissed.

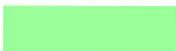
The applicant is a native and citizen of Pakistan who is inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or misrepresentation, and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. He seeks a waiver of inadmissibility pursuant to sections 212(h) and (i) of the Act, 8 U.S.C. §§ 1182(h) and (i), in order to reside in the United States with his U.S. citizen spouse and children.

The Director, Nebraska Service Center, concluded that the applicant had failed to demonstrate extreme hardship to his qualifying spouse and denied the application accordingly. *See Decision of the Director*, dated August 30, 2012. The director also found that the applicant did not merit a waiver in the exercise of discretion. *Id.*

In our decision on appeal, we found that the qualifying spouse would face extreme hardship if she were to relocate to Pakistan. However, we concluded that the applicant had failed to show that his spouse would experience extreme hardship if she continued to be separated from the applicant. We noted that the applicant and his spouse married only two months prior to his removal and that there was no evidence that he had ever lived with or supported her. We also found that the record lacked evidence to prove that the qualifying spouse was financially supporting her family or that she could not afford to do so. Additionally, we acknowledged that the qualifying spouse has several medical conditions but noted that there was no evidence that those conditions were severe or that she required assistance with daily living; instead, she continued to work full time, attend college, live alone, and travel to Pakistan. Finally, we noted that while the qualifying spouse misses her U.S. citizen daughters and worries about their safety in Pakistan, she had chosen to leave her daughters in the care of the applicant and his mother in that country.

On motion, the applicant requests that the AAO "reconsider [his] case and [his] family unity . . . ." He has submitted copies of two AAO decisions sustaining the appeals of other applicants, alleging that those cases are similar to his own. He also states that he has been rehabilitated and is a person of good moral character. Finally, the applicant asserts that his spouse and children are suffering hardship due to their separation and that the family wishes to be together in the United States.

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 establish that the 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 applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO conducts appellate review on a de novo



basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the motion.

The applicant has failed to meet the requirements of a motion, so his motion will be dismissed. He has not stated any new facts or submitted any additional documentary evidence. 8 C.F.R. § 103.5(a)(2). Although he claims that his family is suffering hardship and that he warrants a waiver in the exercise of discretion, those issues were addressed in our decision on appeal. He has also failed to demonstrate that the AAO's previous decision was in error. While the applicant has submitted copies of two AAO decisions which he claims are "precedent decisions" and are similar to his own case, they are not precedent decisions but are instead public copies of unpublished decisions. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. As the applicant's motion does not meet the requirements of a motion, it must be dismissed. 8 C.F.R. § 103.5(a)(4).

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The applicant's motion will be dismissed.

**ORDER:** The motion is dismissed.