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



Date: **NOV 06 2013**

Office: ACCRA, GHANA

FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and son in the United States.

The field office director found that the applicant's wife had not adjusted her status to that of lawful permanent resident and, therefore, the applicant did not have a qualifying relative under the Act. The field office director denied the application accordingly. The AAO dismissed the appeal, finding that it was uncontested that at the time the applicant filed his waiver application, his wife had not yet become a lawful permanent resident. The AAO instructed the applicant that he may file a new waiver application now that his wife is a lawful permanent resident.

On motion, the applicant again contends that his wife is now a lawful permanent resident and submits new evidence of hardship.

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 Service 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 applicant has submitted new documentary evidence to support his waiver application. The applicant's submission meets the requirements of a motion to reopen. Accordingly, the motion is granted.

Nonetheless, the underlying waiver application remains denied. As the AAO stated in our previous decision, it is uncontested that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act and requires a waiver under section 212(i) of the Act. It is also uncontested that at the time the applicant filed his waiver application, his wife had not yet become a lawful permanent resident and, therefore, he did not have a qualifying relative under the Act. Although the AAO instructed the applicant to file a new waiver application, the applicant has filed the instant motion. The waiver application must remain denied because the field office director's decision was correct as the applicant did not have a qualifying relative when he filed his application. Now that the applicant has a qualifying relative under the Act, he must file a *new* waiver application.

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NON-PRECEDENT DECISION

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.

ORDER: The motion is granted but the underlying waiver application remains denied.