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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Portland (POO) Date: AUG 13 2003

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:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Portland, Oregon, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is before the AAO on a motion to reopen. The motion will be dismissed, and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Mexico who was found to be 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 sought to procure admission into the United States by fraud or willful misrepresentation in August 1995. The applicant married a native and citizen of Mexico in October 1954. Her spouse became a lawful permanent resident in 1989. The applicant is the beneficiary of an approved Petition for Alien Relative. She seeks the above waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The AAO affirmed that decision on appeal.

On motion, counsel states that Bureau failed to analyze the evidence according to the standard for review set forth in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999). Counsel states that the applicant's spouse has few significant family members outside the United States, since his wife, 10 of his children and a number of his grandchildren are living in the United States. Counsel then refers to a December 10, 2001, letter in which a physician states that th[redacted] has been a patient of his since February 2000 and is a "sick man." The record is devoid of any reference to the type or nature of his sickness or its diagnosis or prognosis. Nor is there evidence that his wife and not one of his ten children must provide care.

On motion, counsel argues that the applicant is entitled to seek relief under the law that governed at the time the fraud or misrepresentation occurred. In support of this position, counsel cites *INS v. St. Cyr*, 533 U.S. 289, 121 S. Ct. 2271 (June 25, 2001). The *St. Cyr* decision is distinguishable from the case at hand in both the law and the facts. First, the Supreme Court decision specifically addressed the application of section 212(c) of the Act, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The Supreme Court determined that the ultimate repeal of section 212(c) was not retroactive and that section 212(c) relief remains available to those aliens that entered into plea agreements prior to the repeal. The current matter is based on an application for relief under section 212(i) of the Act, which was made more restrictive by IIRIRA. As opposed to section 212(c), the restrictive amendment of section 212(i) has been found to apply retroactively. *Okpa v. INS*, 266 F.3d 313 (4th Cir, 2001). Finally, *INS v. St. Cyr* specifically relates to the settled

expectations of individual aliens who enter into plea agreements with the government. *INS v. St. Cyr* at 291. As there is no evidence that the applicant in the current matter plead guilty as a result of a plea bargain, the reasoning of *St. Cyr* is not applicable to the case at hand. To argue that an alien had a reasonable expectation of a waiver at the time the alien committed an act of fraud or misrepresentation is absurd and makes a mockery of the immigration laws of the United States."

Pursuant to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence.

Pursuant to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration; and be supported by any pertinent precedent decisions.

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

The issues in this matter were thoroughly discussed by the director and the AAO in their prior decisions. Since no new issues have been presented for consideration, the motion will be dismissed.

ORDER: The motion is dismissed. The order of November 26, 2002, dismissing the appeal is affirmed.