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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: Phoenix Date: JUL 02 2003

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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

JUL0203_01H2212

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

The applicant is a native and citizen of Mexico who obtained admission into the United States at various times by using his Border Crossing Card. He was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant married a United States citizen in March 1996, and he is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his United States citizen wife and denied the application accordingly. The AAO affirmed that decision on appeal and on first motion.

The record reflects that the applicant was convicted of the offenses of Resisting Arrest and Aggravated Assault in January 1996 and he was placed on summary probation for six months and fined.

The record also reflects that the applicant was convicted of two counts of Aggravated Driving under the Influence (DUI) on February 21, 1997. He was sentenced to four months imprisonment for each count and was placed on probation for three years. The Board of Immigration Appeals (the Board) held in *Matter of Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999), that the offense of aggravated driving under the influence under Arizona law is a crime involving moral turpitude.

On second motion counsel cites case law relating to the issue of "extreme hardship" as that term applied in matters involving suspension of deportation under section 244 of the Act, 8 U.S.C. 1254, prior to its amendment by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), and recodification under section 240A of the Act, 8 U.S.C. 1229b, and redesignation as "cancellation of removal." *Matter of O-J-O-*, 21 I&N Dec. 381 (BIA 1996); *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978).

Although the former application for suspension of deportation and the present and past applications for waiver of grounds of inadmissibility require a showing of "extreme hardship," the parameters for applying such hardship are somewhat narrower in

waiver of grounds of inadmissibility application proceedings. In such proceedings, the applicant may only show that such hardship would be imposed on a spouse, parent, or child who is a citizen or lawful permanent resident of the United States. In former suspension of deportation proceedings, the alien could show hardship to himself or herself as well as the condition of his or her health, age, length of residence beyond the minimum requirement of seven years, family ties abroad, country conditions, etc. In the present amended cancellation of removal proceedings, hardship to a nonpermanent resident alien is no longer a consideration, the alien must have been physically present for a continuous period of not less than 10 years, and the hardship to the spouse, parent, or child must be exceptional and extremely unusual.

On motion, counsel states that the applicant and his wife have been together for 12 years and they have been married for approximately 6 years. Counsel indicates that Mrs. [redacted] suffers from T-cell Lymphoma. Counsel indicates that Mrs. [redacted] would have to leave her family and country and move to a foreign country where she may not be able to be treated for her medical condition if the applicant is removed from the United States.

Although counsel states that Mrs. [redacted] has a medical condition referred to as Cutaneous T-cell lymphoma, the record only contains a medical review of that particular disease for purposes of research and study. The record is devoid of a physician's examination of Mrs. [redacted] or any diagnosis or prognosis relating specifically to her and this particular affliction. This medical review has been previously submitted for consideration.

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 December 13, 2001, dismissing the appeal is reaffirmed.