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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[redacted]

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JUN 29 2004

FILE: [redacted] Office: SAN FRANCISCO, CA Date:

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]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by th alifornia. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider and reopen. The motion will be dismissed and the previous decision of the AAO will be affirmed.

The applicant is a native and citizen of the Philippines 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 procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States citizen and is the beneficiary of an approved petition for alien relative. She seeks the above waiver in order to remain in the United States with her family and to adjust her status to that of a lawful permanent resident.

The district director concluded the applicant had failed to establish that extreme hardship would be imposed on her U.S. citizen husband. The application was denied accordingly.

On appeal, counsel asserted that the affidavits and supporting documentation submitted by the applicant established that her husban ould suffer extreme hardship if he remained in the U.S. without his wife, or if he joined her in the Philippines. The AAO considered hardship evidence pertainin relocation to the Philippines, as well as evidence pertaining to the applicant an hild and the expected birth of their second child. The AAO additionally considered a psychologist report indicating that would suffer from depression if his wife were removed from the United States, as well as evidence relating to financial contributions made to the household by the applicant, an atement that a separation from his wife would be emotionally and physically insurmountable to him. The AAO concluded that under extreme hardship standards set forth in relevant court cases, the applicant had failed to establish that her spouse would suffer hardship over and above the normal hardship suffered upon the removal of a family member. The appeal was dismissed accordingly.

An applicant has thirty days from the date of an adverse decision, to file a motion to reopen or a motion to reconsider the decision. A motion that does not meet applicable requirements shall be dismissed. *See* 8 C.F.R. §103.5. The AAO notes that in the present case, the AAO decision The AAO decision clearly stated in its instructions that:

> 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 . . . . 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).

In addition, the AAO decision stated clearly that:

> If you have new or additional information that you wish to have considered, you may file a motion to reopen . . . . 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 Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant.

See 8 C.F.R. § 103.5(a)(1)(i).

The record reflects that the applicant's motion to reconsider and reopen was filed o[redacted]hirty-five days after t[redacted]AAO decision was issued. The motion to reconsider is therefore untimely filed pursuant to 8 C.F.R. § 103.5. Moreover, counsel provided no details or information to establish that the delay in filing a motion to reopen was reasonable and beyond the applicant's control. The motion to reopen is therefore also untimely filed.

Because the applicant failed to establish that her motion to reconsider and reopen was filed in a timely manner or that it was reasonable and beyond her control to file the motion late, the motion will be dismissed pursuant to 8 C.F.R. § 103.5(a).

ORDER: The motion is dismissed.