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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090



Washington, DC 20530-2090
**U.S. Citizenship
and Immigration
Services**

HL4

[Redacted]

FILE: [Redacted] Office: LOS ANGELES, CA
[Redacted] RELATES)

Date: FEB 14 2011

IN RE: [Redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after
Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

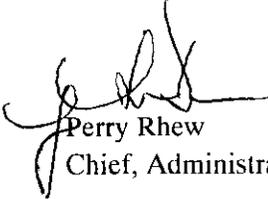
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be dismissed.

The applicant is a native and citizen of Mexico who, on December 24, 1988, was placed into immigration proceedings for having entered the United States without inspection on December 23, 1988. On October 17, 1990, the immigration judge ordered the applicant removed *in absentia*. The applicant failed to depart the United States. On March 1, 1991, the applicant was removed from the United States and returned to Mexico.

The applicant subsequently reentered the United States without inspection on an unknown date, but prior to December 2, 1995, the date on which her U.S. citizen child was born in the United States. The applicant returned to Mexico on an unknown date, but prior to November 19, 1997, the date on which her now lawful permanent resident child was born in Mexico.

On August 19, 2008, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) as a derivative on an approved Petition for Alien Relative (Form I-130) filed on behalf of the applicant's spouse. The Form I-485 indicates that the applicant reentered the United States without inspection on March 5, 1999. On April 27, 2009, the applicant filed the Form I-212 indicating that she resided in the United States. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). She seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to remain in the United States and reside with her now lawful permanent resident spouse, one lawful permanent resident child and three U.S. citizen children.

The field office director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed. The field office director determined that the applicant was not eligible to apply for permission to reapply for admission because she had not remained outside the United States for the required ten years. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated June 16, 2009.

On appeal, counsel contended that the field office director erroneously applied the law to the facts of the applicant's case. Counsel contended that the respondent was legally present in the United States in 1988 and the facts surrounding the 1991 removal indicate that the removal was in error and in violation of the law.¹ *See Form I-290B*, dated July 5, 2009. In support of his contentions, counsel submitted only the referenced Form I-290B.

¹ The AAO has no authority to review the decision to remove the applicant. The only issue before the AAO is whether the applicant, who was physically removed from the United States in 1991 and is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, is eligible for permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act.

The AAO dismissed the applicant's appeal because she is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and is not eligible to apply for permission to reapply for admission because she has not remained outside the United States for the required ten years. *Decision of AAO*, dated August 6, 2010.

In the motion to reopen or reconsider, counsel contends that he received new information from a Freedom of Information Act (FOIA) request which is relevant to the applicant's Form I-212 because it relates to the denial of the waiver and the underlying removal order. *See Form I-290B*, dated September 1, 2010. On the Form I-290B, counsel indicates that he will forward additional evidence and/or a brief within thirty days.² While the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that an applicant may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. Thus, the additional brief and evidence filed by counsel with the AAO on November 2, 2010 may not be considered.

8 C.F.R. § 103.5(a) provides, in pertinent part:

(2) Requirements for motion to reopen.

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

- a. The requested evidence was not material to the issue of eligibility;
- b. The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
- c. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

(3) Requirements for motion to reconsider.

² The AAO notes that counsel indicates that he is filing an appeal; however, the dismissal of an appeal may not be appealed. To seek a reopening or reconsideration of an appeal, the proper course of action is to file a motion.

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.

Counsel fails to make any argument or provide pertinent precedent decisions to support a finding that the AAO incorrectly applied the law. Accordingly, the AAO finds that counsel failed to state reasons for reconsideration that are supported by any pertinent precedent decisions establishing that the AAO's decision was based on an incorrect application of law.

Counsel failed to submit evidence with the motion to reopen to establish that the AAO's prior decision was in error

The AAO finds that the documentation and argument submitted by counsel on November 2, 2010 does not warrant a motion to reopen *sua sponte* since it does not establish that the applicant is not inadmissible pursuant to section 212(a)(9)(C) of the Act, which renders the applicant *ineligible* for permission to reapply for admission. Moreover, the motion to reopen which the applicant filed with the immigration judge on November 4, 2010 based on the FOIA information referred to by counsel was denied on December 22, 2010.

After a careful review of the record, it is concluded that the applicant has failed to establish that the contentions submitted in the motion to reopen or reconsider meet the requirements of a motion to reopen or reconsider. Accordingly, the motion to reopen or reconsider is dismissed pursuant to 8 C.F.R. § 103.5(a)(4) and the order dismissing the appeal is affirmed.

ORDER: The motion to reopen or reconsider is dismissed. The order dismissing the appeal will be affirmed.