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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 20529-2090



U.S. Citizenship
and Immigration
Services

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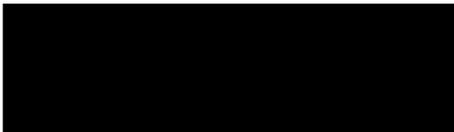
Office: TEXAS SERVICE CENTER

FILE:

IN RE: Applicant:

APPLICATION: Application to Register Permanent Residence or Adjust Status (Form I-485) Pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255

ON BEHALF OF PETITIONER:



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 matter is before the Administrative Appeals Office (AAO) on a second motion to reopen or reconsider. The Texas Service Center Director (the director) initially denied the application to adjust status (Form I-485), a decision that the AAO has upheld upon certification from the director as well as when ruling on the applicant's first motion. The applicant's second motion will be dismissed and the application will remain denied.

As the facts and procedural history have been adequately documented in our previous decisions, we shall repeat only certain facts as necessary here. The applicant seeks to adjust his status to that of a lawful permanent resident pursuant to section 245 of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1255. The director and the AAO found the applicant ineligible to adjust his status because the applicant did not establish that his failure to maintain his nonimmigrant status was through no fault of his own.

The regulations governing motions at 8 C.F.R. § 103.5(a) state, in pertinent part:

(2) Requirements for motion to reopen. 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. . . .

(3) Requirements for motion to reconsider. 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.

The applicant's submission does not meet the requirements of a motion to reopen or reconsider. Counsel submits a brief, a statement from the applicant's brother, and a letter from the applicant to the [REDACTED] about his brother. Nothing in the submission includes new facts or establishes that the decision to deny the application was incorrect based upon the evidence in the record at the time of the initial decision. The statement from the applicant's brother does not show that he represented the applicant pursuant to 8 C.F.R. § 292(a)(1), and the record still lacks a properly executed Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) as required by 8 C.F.R. § 292.4. As we have stated in our prior decisions, the applicant cannot claim that his brother was authorized by regulation to act on his behalf in any capacity recognized under 8 C.F.R. § 292.1.

Counsel fails to explain the relevance of the applicant's letter to the [REDACTED] in the matter at hand. Any ineffective assistance of counsel claim pursuant to *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988) that the applicant may put forth fails because the applicant, as the beneficiary of a visa petition, is not an affected party. 8 C.F.R. § 103.3(a)(1)(iii)(B). As the applicant's submitted evidence does not meet the requirements of a motion to reopen or reconsider, the motion shall be dismissed pursuant to 8 C.F.R. § 103.4(a)(4) for failing to meet



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applicable requirements. As in all proceedings, the applicant bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion is dismissed. The application remains denied.