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



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

EAC-01-045-54797

IN RE:

Applicant:



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:

SELF-REPRESENTED

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 application for permission to reapply for admission after removal was denied by the Director, Vermont Service Center on June 18, 2001. The Administrative Appeals Office (AAO) dismissed an appeal on January 7, 2002. The AAO's order was affirmed on April 15, 2002, subsequent to a motion to reopen and reconsider. The matter is now before the AAO on a second motion to reconsider. The motion will be dismissed and the AAO decision dated, January 7, 2002, will be affirmed.

The applicant is a native and a citizen of Guatemala who was present in the United States without a lawful admission or parole on February 9, 1996. On April 10, 1997, an Immigration Judge found the applicant deportable and granted him voluntary departure in lieu of deportation until August 8, 1997. The applicant failed to surrender for removal or depart from the United States and is therefore inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant married a U.S. citizen on October 6, 2000, and is the beneficiary of an approved petition for alien relative. He 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 his U.S. citizen spouse and child.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the applicant's Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Director's decision* dated June 18, 2001. The decision was affirmed by the AAO on appeal. *See AAO Decision*, dated January 7, 2002. In a subsequent motion to reopen and reconsider, the applicant failed to provide new facts to be proved, or reasons for the motion to reconsider. After careful review of the case, the AAO affirmed the prior AAO decision, dated January 7, 2002. *See AAO Decision*, dated April 15, 2002.

In the present motion to reconsider the applicant submits affidavits from relatives and friends regarding his character. In addition the applicant submits a letter with the same statements he presented with his first motion to reconsider. The applicant states that he is not a criminal, he is a person of good moral character, he has been in the United States for a long period of time and that his family would suffer extreme hardship if he was forced to return to Guatemala.

The regulation at 8 C.F.R. § 103.5(a) states in pertinent part:

- (a) Motions to reopen or reconsider. . .
 - (2) Requirements for motion to reopen. 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.
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 - (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.
 - (4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The AAO finds that in the motion to reconsider no new information or evidence is submitted and the applicant did not identify any legal error or misapplication of law in the previous AAO decision.

The issues in this matter were thoroughly discussed by the Director and the AAO in their prior decisions. In the motion to reconsider the applicant failed to provide any new evidence or set forth any new facts to be proved. Since no new issues have been presented for consideration, the motion will be dismissed.

ORDER: The motion is dismissed. The order of January 7, 2002, dismissing the appeal is affirmed.