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



U.S. Citizenship
and Immigration
Services



H 24

FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 17 2005

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 and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is before the AAO on a motion to reopen and reconsider. The motion will be dismissed, and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Ecuador who was admitted to the United States with a nonimmigrant visa in 1985 and remained in the United States beyond his authorized stay. The applicant was apprehended and arrested by the Immigration and Naturalization Service (INS, now, Immigration and Customs Enforcement (ICE)) on February 19, 1997, and was served with an Order to Show Cause. The applicant failed to appear for his immigration court merits hearing on July 23, 1997 and he was subsequently ordered deported in absentia by the immigration judge. 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). He married a U.S. citizen on March 5, 2001 and on April 18, 2001 his spouse filed an I-130, Petition for Alien Relative and an I-485, Application to Register Permanent Residence or to Adjust Status. Both applications were denied on June 28, 2002 because the applicant and his spouse failed to appear for a scheduled interview with CIS. 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).

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 April 4, 2003. The decision was affirmed by the AAO on appeal. See *AAO Decision*, dated December 16, 2003.

In the motion to reconsider the applicant's spouse submits a letter in which she states that the applicant is a person of good moral character, he is a hard working, good and honest person, he does not have a criminal record and he should be granted a pardon. The AAO notes that the letter submitted is dated January 12, 2004, and it is the same letter previously submitted and dated June 5, 2002.

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.
.....
 - (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 on motion no new information or evidence is submitted and the applicant's spouse 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. On motion 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 December 16, 2003, dismissing the appeal is affirmed.