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

(b)(6)

[redacted]

Date: APR 30 2013 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Applicant: [redacted]

PETITION: 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 PETITIONER:

[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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on appeal. The appeal will be rejected.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit, section 212(a)(9)(A)(i) of the Act as an alien previously removed, section 212(a)(9)(C)(i)(II) of the Act for being unlawful present in the United States after removal, and section 241(a)(5) of the Act as an alien whose prior removal order was reinstated. The director found that the applicant was ineligible for permission to reapply for admission because his removal order was reinstated and because he reentered the United States without permission or inspection, and denied the application accordingly. *Decision of the Director*, dated December 8, 2005. The AAO dismissed the subsequent appeal, finding that the applicant is also ineligible for permission to reapply for admission pursuant to section 212(a)(9)(C)(ii) of the Act as the applicant has not remained outside the United States for more than ten years since his departure. *Decision of the AAO,* dated March 13, 2009.

More than two years after the AAO's decision, counsel filed an appeal. On page 1 of the Form I-290B Notice of Appeal or Motion, counsel for the applicant checked the box which indicates, "I am filing an appeal. My brief and/or additional evidence is attached." On page 2 of the Form I-290B, in Part 2, counsel indicates he is appealing the I-485/I-212 dated January 6, 2004. *Form I-290B,* signed December 22, 2011. As explained below, the appeal must be rejected for several reasons.

First, to the extent the Form I-290B purports to appeal the Form I-485, which is the only decision in the record that is dated January 6, 2004, the AAO does not have jurisdiction over an appeal from the denial of a Form I-485 adjustment application filed under section 245 of the Immigration and Nationality Act. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement. Accordingly, the appeal of the Form I-485 must be rejected.

Second, regarding the appeal of the Form I-212, as explained on the cover sheet for the AAO decision of March 13, 2009, an applicant who believes the AAO incorrectly applied the law or who wishes to submit additional information may file a motion to reconsider or a motion to reopen. 8 C.F.R. § 103.5(a)(1)(ii). There is nothing in the regulations allowing for an administrative appeal of an AAO decision. Although an applicant may file a motion to reopen or a motion to reconsider an AAO decision pursuant to 8 C.F.R. §103.5, there is no appeal of that decision. Accordingly, the appeal of the Form I-212 must be rejected.

Even assuming counsel intended to file a motion, instead of an appeal, of the AAO's denial of the Form I-212, the motion would also be rejected. The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that an affected party must file a motion to reopen within thirty 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 was beyond the control of the applicant or petition. In this case, the AAO's decision was issued on March 13, 2009. Although an untimely motion may be excused in the discretion of the Service, counsel has not addressed why the Form I-290B was filed more than two years and eight months late. Because there is no allegation that the delay was reasonable and beyond the applicant's control, there is no basis for the Service to excuse the late filing. Therefore, even if counsel had filed a motion instead of an appeal, the motion would nonetheless be rejected as untimely filed.

ORDER: The appeal is rejected.