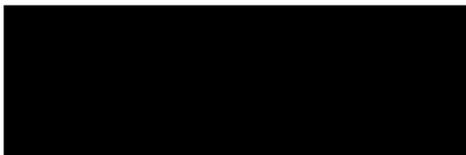


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H6

Date: **JUL 13 2012** Office: MEXICO CITY (CIUDAD JUAREZ) FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and was subsequently appealed to the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen/reconsider. The motion will be dismissed.

The record reflects that the applicant, a native and citizen of Mexico, was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant entered the United States in 1991 without inspection, and departed in December 2005. Therefore, the applicant accrued unlawful presence in the United States from April 1, 1997 until December 2005. The applicant does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with her U.S. Citizen husband.

The District Director found that the applicant failed to establish that her spouse would experience extreme hardship as a consequence of her inadmissibility. The waiver application was denied accordingly. *See Decision of District Director*, November 14, 2006. The applicant appealed this decision to the AAO, and the AAO rejected the appeal on November 9, 2009 as untimely filed. The case is now before the AAO on a motion to reopen/reconsider.¹

The applicant filed a motion to reopen and reconsider with an attached memorandum and other documentation. 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. 8 C.F.R. § 103.5(a)(2). 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The motion shall be dismissed for failing to meet the requirement set forth in 8 C.F.R. § 103.5(a)(1)(iii). The regulation at 8 C.F.R. § 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be “[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding.” In this matter, the motion does not contain the statement required by this regulation. The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion

¹ The appeal was rejected as untimely filed and returned to the District Director. As the untimely appeal included medical documents for the applicant’s spouse, it was found to meet the requirements of a motion to reopen. The decision instructed the District Director to consider the appeal as a motion to reopen, and to render a new decision accordingly. However, the cover letter of the AAO decision erroneously stated that the applicant could file a motion to reconsider or a motion to reopen, even though the appeal was rejected and no decision was rendered by the AAO. The matter was therefore forwarded to the AAO with no decision by the District Director considering the rejected appeal as a motion to reopen.

which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must be dismissed for this reason.

ORDER: The motion is dismissed.