

Identifying data deleted to
prevent identity theft and
invasion of personal privacy

PUBLIC COPY



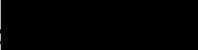
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6

DATE: **JUN 04 2012**

OFFICE: TEGUCIGALPA, HONDURAS

File: 

IN RE:

Applicant: 

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

ON BEHALF OF APPLICANT:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 waiver application was denied by the Field Office Director, Tegucigalpa, Honduras, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The AAO's decision is now before the AAO on appeal. The appeal will be rejected.

The applicant is a native and citizen of Honduras who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 and seeking readmission within 10 years of his departure from the United States. On December 1, 2007 the Field Office Director denied the applicant's Form I-601 waiver application, finding that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. *Decision of Field Office Director*, December 1, 2007. The AAO dismissed the subsequent appeal, finding that while the applicant established that his qualifying relative spouse would suffer extreme hardship were she to relocate to Honduras, the applicant failed to establish that his qualifying relative spouse would suffer extreme hardship were she to remain in the United States while the applicant resided abroad. *Decision of the AAO*, June 1, 2010.

On page 1 of the Form I-290B, Notice of Appeal or Motion filed in response to the AAO dismissal, counsel for the applicant checked Box B which indicates: "I am filing an appeal. My brief and/or additional evidence will be submitted to the AAO within 30 days." *Form I-290B*, signed June 29, 2010. As explained on the cover sheet for the AAO decision of June 1, 2010, 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.

The AAO notes that the brief submitted by counsel in support of the instant appeal is entitled "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. 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 regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 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." Counsel has failed to assert that the decision of the AAO was based on an incorrect application of law or Service policy, based on the evidence of record at the time of the decision. Further, the motion does not specify any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or Service policy. Finally, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C).

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 must be rejected.



Page 3

ORDER: The appeal is rejected.