



U.S. Citizenship
and Immigration
Services

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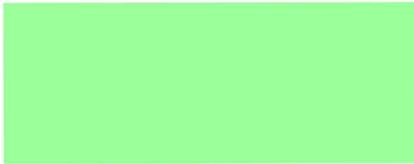
DATE: **NOV 27 2013** Office: ANAHEIM

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez, Mexico. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion. The motion will be dismissed. The application remains denied.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to 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 one year or more and seeking readmission within 10 years of his last departure from the United States. The applicant's father is a lawful permanent resident. He seeks a waiver of inadmissibility in order to reside in the United States.

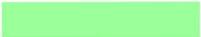
The Field Office Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on his qualifying relative, his father, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. The AAO on appeal also found that the applicant had failed to establish that extreme hardship would be imposed upon his father and dismissed the appeal.

On motion, counsel submits Form I-290B, Notice of Appeal or Motion (I-290B), in which he asserts that the AAO erred by dismissing strong evidence of hardship to the applicant's father. Accompanying the I-290B are a copy of the AAO decision; a Form G-28, Notice of Entry or Appearance as Attorney or Accredited Representative; and a cover letter. The Form I-290B specifies that the motion being filed is a motion to reconsider.

A motion to reconsider must: (1) 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 [USCIS] policy; and (2) 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).

Counsel has stated reasons for reconsideration. He asserts that the AAO dismissed the applicant's evidence of hardship to his father when it concluded that no evidence shows that the applicant's father continues to receive treatment, and that doing so was capricious, arbitrary and a mistake. However, counsel has not cited to a precedent decision to support the request for reconsideration and show that the AAO's decision was based on an incorrect application of law or policy. Furthermore, while counsel states the AAO erred, he has not established that the decision was incorrect based on the evidence of record considered on appeal. The AAO's decision indicates that the evidence did not establish that the applicant's father was experiencing emotional hardship after receiving treatment. The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. The motion to reconsider, therefore, will be dismissed.

Additionally, 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, and, if so, the court, nature, date, and status or result of the proceeding." The motion does not include this statement. Therefore, it also will be dismissed for not meeting the requirement of 8 C.F.R. § 103.5(a)(1)(iii)(C).

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion is dismissed. The waiver application remains denied.