



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: DEC 24 2013 Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application to Register Permanent Residence or Adjust Status Pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255

ON BEHALF OF APPLICANT:

[Redacted]

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. 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 M. Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application to adjust status was denied by the Director, California Service Center (director). The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal and a motion to reopen as untimely. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be rejected.

The record reflects that the applicant is a native and citizen of Mexico, who filed a Form I-485, Application to Register Permanent Residence or Adjust Status and a Form I-601, Application for Waiver of Grounds of Inadmissibility. The director denied the Form I-485 and the Form I-601. The applicant submitted a Notice of Appeal or Motion, Form I-290B to appeal the director's decisions. The applicant indicated at Part 2 of the Form I-290B that his motion is related to the Form I-485 not the Form I-601. The AAO accepted the Form I-290B as it relates to the appeal of the Form I-485, and on April 2, 2012, dismissed the Form I-290B as untimely filed because the applicant filed the appeal more than three years after the decision of the director. The applicant, through his counsel filed a Form I-290B, Notice of Appeal or Motion requesting the AAO to reconsider its decision of April 2, 2012. Counsel provided the receipt number as [REDACTED], the decision date as April 2, 2012 and the office where the decision was issued as California Service Center.¹ On March 1, 2013, the AAO dismissed the motion as untimely. The applicant through his counsel timely filed the instant motion to reopen and reconsider.

On the Form I-290B, counsel asserts that the AAO's decision to dismiss the first motion as untimely was erroneous. Counsel also asserts that the AAO failed to "take a fresh look at the fact that [the applicant] was originally seeking to request SUA SPONTE reopening of his adjustment of status application that had been previously denied by USCIS." Counsel further asserts that the applicant's request for a sua sponte reopening of the director's decision was due to ineffective assistance of prior counsel. Counsel requests that the AAO "take a fresh look at the instant case, the original request to reinstate sua sponte the processing of [the applicant's] adjustment of status should be granted and [the applicant] should be given a new opportunity to pursue a reevaluation of his extreme hardship application."

A motion to reopen must state the new facts to be proven in the reopened proceeding and, when filed, 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 the applicable requirements when filed shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On the current motion, counsel alleges ineffective assistance of prior counsel as the basis for his original request for a sua sponte reopening of the director's decision to deny the adjustment application. It is noted that any appeal and or motion based upon a claim of ineffective

¹ The AAO notes that the receipt number provided by counsel relates to the Form I-485 application the applicant filed on July 30, 2007 and the decision date of April 2, 2012 relates to the AAO decision dismissing the applicant's appeal as untimely.

assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The applicant has not submitted any of the required documentation to support the said motion based on ineffective assistance of counsel.

Notwithstanding, the AAO will reject the motion as it lacks jurisdiction to review a denial of an application for adjustment of status under section 245(a) of the Immigration and Nationality Act (the Act). 8 C.F.R. § 245.2(a)(5)(ii). 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 only 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.

The AAO has jurisdiction to review denials of applications for adjustment of status filed by aliens seeking the bona fide marriage exemption and aliens in U or T nonimmigrant status. Section 245(e), (l) and (m) of the Act, 8 U.S.C. § 1255(e), (l), (m); 8 C.F.R. §§ 245.1(c)(8)(viii), 245.23(i), 245.24(f)(2). The AAO has no jurisdiction to review denials of applications for adjustment of status under section 245(a) of the Act. 8 C.F.R. § 245.2(a)(5)(ii).

In this matter, the AAO dismissed the appeal and the first motion to reopen and reconsider as untimely filed. The AAO did not render a substantive decision in this case. As the appeal and the first motion were rejected by the AAO as untimely, there is no decision on the part of the AAO that may be reopened and reconsidered in this proceeding. The official who rendered the initial decision in the proceeding has jurisdiction over a motion to reopen and/or a motion to reconsider. 8 C.F.R. § 103.5(a)(1)(ii). As the disputed decision was rendered by the director, California Service Center, the AAO has no jurisdiction over the current motion. As such, the motion will be rejected.

Accordingly, the motion is rejected.

ORDER: The motion is rejected.