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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: SAN DIEGO, CA Date: MAR 01 2011

IN RE: [redacted]

APPLICATION: 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 APPLICANT:

[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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 District Director, San Diego, California, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The record reflects that, on July 10, 2009, the district director found that the applicant was inadmissible to the United States pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed. The district director determined that the applicant was not eligible to apply for permission to reapply for admission because she had not remained outside the United States for the required ten years. The district director denied the Form I-212 accordingly. *Decision of the District Director*, dated July 10, 2009.

8 C.F.R. § 103.3(a)(1)(v) states in pertinent part:

> *Summary dismissal.* An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

The record reflects that, on August 6, 2009, counsel filed a Notice of Appeal (Form I-290B). On the Form I-290B, counsel indicates that he will forward additional evidence and/or a brief within thirty days. The regulation at 8 C.F.R. § 103.3(a)(2)(viii) and the instructions to Form I-290B require the affected party to submit the brief or evidence directly to the AAO, not to the San Diego, California district office or any other federal office. The record does not contain the brief and/or evidence that counsel indicated would be submitted to the AAO. Even if counsel were to submit evidence that a brief was filed with an office other than the AAO, the AAO would not consider the brief or evidence on appeal because counsel failed to follow the regulations or the instructions for the proper filing location. Accordingly the record is complete.

On appeal, counsel simply asserts, "see attached." In support of the Form I-290B, counsel submits a copy of an appeal from an order of the United States District Court for the Western District of Washington in the case *Gonzales v. DHS* (*Gonzales II*), 508 F.3d 1227 (9th Cir. 2007). The AAO notes that an Order Denying Plaintiffs' Motion for Preliminary Injunction (Dkt # 59) was issued, *Gonzales v. DHS,* No. C06-1411-MJP (W.D. Wash. Filed February 6, 2006) finding it unlikely that plaintiffs would be successful on appeal.[1] Counsel failed to identify either on the Form I-290B or through submission of a brief or evidence any erroneous conclusion of law or statement of fact made by the field office director. The applicant's appeal will therefore be summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v).

ORDER: The appeal is dismissed.

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[1] The AAO notes that that the Ninth Circuit has considered and dismissed identical retroactivity arguments in *Morales-Izquierdo v. Department of Homeland Security*, 2010 WL 1254137 (9th Cir. 2010).