



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

Date: **SEP 10 2013**

Office: MIAMI, FL

FILE: [Redacted]

IN RE:

Applicant: [Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h)

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. 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 Field Office Director, Miami, Florida. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and motion. The matter is now before the AAO on a second motion. The motion will be dismissed and the underlying application remains denied.

The record reflects that the applicant is a native and citizen of Argentina who was found to be inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a crime relating to a controlled substance. The applicant has a U.S. citizen son and daughter and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act in order to reside in the United States with his children.

The field office director found that the applicant was convicted of possession of drug paraphernalia and was not eligible for a waiver of inadmissibility. The field office director denied the application accordingly. The AAO dismissed the appeal, also finding that the applicant was convicted of possession of drug paraphernalia related to cocaine. The AAO rejected counsel's contention that the conviction was expunged and that the judge took "no action" on the possession of drug paraphernalia charge. The AAO dismissed the appeal accordingly. The AAO dismissed a subsequent motion, finding that counsel made no new legal argument and stated no new facts, but simply reiterated the argument made on appeal that the conviction was expunged and there was "no action" taken. The matter is now before the AAO on a second motion.

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).

Here, the applicant's filing does not meet the requirements of a motion. In response to the question asking for the basis for the motion, the Form I-290B states, in its entirety, "Please see attached." The attachment is identical to the attachment that was previously submitted with the applicant's first motion. Counsel has not stated any new facts to be proved in the reopened proceedings and the AAO has not received any new evidence with respect to this matter. Counsel has also made no new legal argument, but is again reiterating the same argument that has already been explicitly rejected by the AAO. The motion does not meet the applicable requirements of a motion. Accordingly, the motion will be dismissed.

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 and the underlying application remains denied.