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



**U.S. Citizenship
and Immigration
Services**

Hcy

[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO, CA
(RELATES)

Date: SEP 10 2009

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Francisco, California, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion to reconsider is denied. The order dismissing the appeal will be affirmed.

The applicant is a native and citizen of El Salvador who, on July 23, 1994, was placed into immigration proceedings after he entered the United States without inspection. On October 3, 1995, the immigration judge ordered the applicant removed *in absentia*. On October 3, 1995, a warrant for the applicant's removal was issued. The applicant failed to depart the United States. On February 4, 2000, the applicant married his then lawful permanent resident spouse, [REDACTED]. On April 19, 2001, Ms. [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On June 13, 2001, the applicant filed a Form I-212. On February 20, 2003, [REDACTED] became a naturalized U.S. citizen. On May 12, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a second Form I-130 filed by [REDACTED] on his behalf. On December 23, 2003, the applicant's Form I-212 was denied. The applicant appealed the denial of the Form I-212 to this office. On February 23, 2004, the first Form I-130 was approved. On March 23, 2004, the second Form I-130 was approved. On the same day, the applicant's Form I-485 was denied. On December 23, 2004, this office dismissed the applicant's appeal of the denial of the Form I-212. On September 25, 2005, the applicant filed a second Form I-485. On the same day, the applicant filed a second Form I-212. On June 9, 2006, the applicant's Form I-485 was denied. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside in the United States with his U.S. citizen spouse and daughter.

The field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated March 25, 2008.

On January 30, 2009, the AAO dismissed the applicant's appeal because he did not warrant a favorable exercise of discretion. *Decision of AAO*, dated January 30, 2009.

In the motion to reconsider, counsel contends that the AAO made legal errors in adjudicating the applicant's case and abused its discretion. *See Counsel's Points and Authorities in Support of Motion to Reconsider*. In support of her motion to reconsider, counsel only submits the referenced points and authorities. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the

date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

- (ii) Other aliens.-Any alien not described in clause (i) who-
 - (I) has been ordered removed under section 240 or any other provision of law, or
 - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case on a alien convicted of an aggravated felony) is inadmissible.
- (iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

8 C.F.R. § 103.5(a) provides, in pertinent part:

(2) Requirements for motion to reopen.

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

- a. The requested evidence was not material to the issue of eligibility;
- b. The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
- c. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

(3) Requirements for 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.

In support of the motion to reconsider, counsel contends that the AAO erred legally in concluding, without analysis that country conditions in El Salvador have changed with respect to [REDACTED] whose grant of political asylum proves that she has been found to have suffered past persecution. Counsel contends that the AAO erred in finding that [REDACTED] would not suffer persecution based on general country conditions. Counsel contends that the Ninth Circuit Court of Appeals (Ninth Circuit) has consistently held that, once past persecution has been established, there is a presumption of future persecution, which may be rebutted by the government. Counsel contends that the government can only rebut that presumption through an individualized analysis of the specific person's situation and that use of general reports of country conditions cannot be substituted for the individualized analysis. Counsel contends that [REDACTED] derivative status does not change the legal and factual finding that she has suffered past persecution. Counsel contends that [REDACTED] daughter would also be presumed to face future persecution as the treatment of family is probative of harm to her.

The AAO finds that counsel's contentions are unpersuasive and do not form a basis for a motion to reconsider. While counsel's contentions in regard to burden of proof and past persecution are correct in the context of immigration proceedings regarding an asylum application, the application before the AAO is a Form I-212 and the applicant has the burden to prove that he is eligible for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361.

Counsel contends that the AAO abused its discretion in failing to make a legal analysis of the totality of the evidence and by only stating general conclusions unsupported by argument and law. Counsel contends that the AAO's opinion merely listed what factors were to be considered and made a one sentence conclusion without any analysis. Counsel contends that all the factors must be examined and analyzed and that the analysis is to be fully explained in the decision. Counsel contends that the AAO is required to weigh the factors in the applicant's case and explain how each was considered. Counsel concedes that the AAO listed in great detail the facts from the record and excerpts from case law, but contends that this list fails to engage in any legal analysis.

The AAO finds that counsel's contentions are unpersuasive and do not form a basis for a motion to reconsider. In each of the cases to which counsel cites, the courts also listed and analyzed the applicant's various factors in a similar fashion to the AAO's examination and analysis of the case before it. Moreover, the AAO goes into greater detail than any of the decisions cited by counsel. The AAO gives credence and due respect to all of the arguments or evidence in the record and indicates, when appropriate, any misgivings this office has with the arguments or evidence submitted. The AAO clearly set forth which factor's were to be considered positive and which ones were to be considered negative. The AAO, in its decision, clearly indicates when a positive factor is to be given less weight or if there are mitigating factors to any of the negative factors in the applicant's case. The AAO's decision reflects a greater amount of examination and analysis of each and every factor presented to it than the decisions to which counsel cites. Counsel does not have any basis for a motion to reconsider

when that motion to reconsider is filed simply because counsel disagrees with the AAO's finding that the negative factors outweigh the positive factors in the applicant's case.

After a careful review of the record, it is concluded that the applicant has failed to establish that the contentions submitted in the motion to reconsider meet the requirements of a motion to reconsider. Accordingly, the motion to reconsider is denied and the order dismissing the appeal is affirmed.

ORDER: The motion to reconsider is denied. The order dismissing the appeal will be affirmed.