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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

H4

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: APR 05 2010

IN RE: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C)(ii)

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District 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 AAO denied a subsequent motion to reconsider. The matter is now before the AAO on a motion to reconsider or reopen. The motion to reconsider or reconsider is dismissed. The order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Mexico who, on January 13, 2000, was apprehended by immigration officers. The applicant testified that he had entered the United States without inspection and had resided in the United States since August 25, 1995. On January 13, 2000, the applicant was permitted to return to Mexico voluntarily.

The applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission, on an unknown date, but prior to February 2, 2000, the date on which he married his U.S. citizen spouse in San Francisco, California. On August 3, 2004, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an approved Petition for Alien Relative (Form I-130) filed on his behalf by his spouse. On the same day, the applicant filed the Form I-212, indicating that he resided in the United States. On May 16, 2005, the applicant appeared at U.S. Citizenship and Immigration Services' (USCIS) San Francisco, California District Office. The applicant testified that he had reentered the United States without inspection on January 27, 2000. The applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(I), for illegally reentering the United States after having accrued more than one year of unlawful presence. He seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(ii) in order to remain in the United States and reside with his U.S. citizen spouse and U.S. citizen children.

The district director determined that the applicant is inadmissible 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 accrued more than one year of unlawful presence. The district director determined that the applicant was not eligible to apply for permission to reapply for admission because he had not remained outside the United States for the required ten years. The district director denied the Form I-212 accordingly. *See District Director's Decision,* dated September 14, 2005

On March 26, 2009, the AAO dismissed the applicant's appeal because he is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and is not eligible to apply for permission to reapply for admission because he has not remained outside the United States for the required ten years. *Decision of AAO,* dated March 26, 2009.

In the first motion to reconsider, the applicant's spouse contended that that the AAO's decision is morally wrong and breaks her heart. *See Letter Accompanying Motion to Reconsider.* In support of his motion to reconsider, the applicant only submitted his spouse's letter.

On July 16, 2009, the AAO dismissed the applicant's motion to reconsider because he is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and is not eligible to apply for permission

to reapply for admission because he has not remained outside the United States for the required ten years. *Decision of AAO,* dated July 16, 2009.

In the motion to reconsider or reopen currently before the AAO, the applicant's spouse contends that that the AAO's decision is morally wrong in many different ways and goes on to describe how the hardships her family would suffer if the applicant were denied admission could be avoided by granting the applicant's Form I-212. *See Letter Accompanying Motion to Reconsider*, dated August 14, 2009. In support of his motion to reconsider, the applicant only submits his spouse's letter. The entire record was reviewed in rendering a decision in this case.

The regulation at 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 reopen or reconsider, the applicant's spouse contends that that the AAO's decision is morally wrong in many different ways. She states several reasons why her family would suffer if the applicant was denied admission to the United States. She contends that if the decision is overturned all of the bad things that would happen to her family could be avoided. The applicant's

spouse contends that it is within the AAO's power to prevent the tragedy that would occur upon the applicant's absence.

The AAO finds that, even if an applicant has established that his or her family will suffer harm if he or she has to leave the United States, when an applicant is statutorily *ineligible* to apply for permission to reapply for admission under section 212(a)(9)(C)(i) of the Act, he or she must apply for permission to reapply for admission from outside the United States and only after he or she has remained outside the United States for a period of ten years. An applicant will be required to show proof of residence outside the United States for the full ten-year period before he or she is eligible to file for permission to reapply for admission. As such, a motion to reopen or reconsider would only warrant reopening of an applicant's case if it is established that the applicant is currently outside the United States **and** that he or she has been outside the United States for the past ten years. The record clearly establishes that the applicant last departed the United States after accruing more than one year of unlawful presence less than ten years ago and is currently present in the United States. The AAO, therefore, finds that it is not possible for the applicant to be able to prove that he is eligible to apply for permission to reapply for admission at this time. The AAO notes that there can be no basis for a motion to reopen or reconsider until the applicant becomes eligible for permission to reapply for admission. Since the basis for the denial is statutorily based, there is no case law that contradicts the statute and only Congress may change the laws of the United States. The AAO cannot grant an applicant's Form I-212 if he or she in ineligible. As discussed in length in its prior decision, the AAO finds that the applicant is *ineligible* to apply for permission to reapply for admission because he is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and has not remained outside the United States for the required ten years.

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 reopen or reconsider meet the requirements of a motion to reopen or reconsider. Accordingly, the motion to reopen or reconsider is dismissed and the order dismissing the appeal is affirmed.

ORDER: The motion to reopen or reconsider is dismissed. The order dismissing the appeal will be affirmed.