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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

FILE:



Office: LOS ANGELES, CA  
(RELATES)

Date: **AUG 24 2010**

IN RE:



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:



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 \$585. 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 Field Office Director, Los Angeles, California denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as improperly filed and the application will be denied.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the appeal on a Form I-290B, Notice of Appeal or Motion, which may be accompanied by a brief and/or additional evidence.

The record reflects that counsel submitted a brief and filing fee in connection with the applicant's appeal; however, he did not submit the required Form I-290B, Notice of Appeal or Motion. United States Citizenship and Immigration Services, therefore, rejected his filing and instructed him to submit the required form. When responding to the rejection notice, counsel did not submit a Form I-290B, claiming that one was not required. As counsel failed to submit the applicant's appeal on a Form I-290B, the AAO finds that the appeal was not properly filed and must be rejected.<sup>1</sup>

**ORDER:** The appeal is rejected. The application will be denied.

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<sup>1</sup> The AAO notes that in support of his appeal, counsel contends that it would be impermissibly retroactive to apply *Gonzales v. DHS (Gonzales II)*, 508 F.3d 1227 (9<sup>th</sup> Cir. 2007), when the applicant, in filing the Form I-212, relied upon the Ninth Circuit Court of Appeals (Ninth Circuit) decision in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9<sup>th</sup> Cir. 2004). Counsel's contention is unpersuasive. In 2007, the Ninth Circuit Court of Appeals (Ninth Circuit) found that the Ninth Circuit should defer to the Board of Immigration Appeal's (BIA) decision in *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). See *Gonzales v. DHS (Gonzales II)*, 508 F.3d 1227 (9<sup>th</sup> Cir. 2007). Furthermore, retroactivity arguments before the Ninth Circuit in regard to *Gonzales II* mirror retroactivity arguments already dismissed by the Ninth Circuit in *Morales-Izquierdo v. Department of Homeland Security*, 2010 WL 1254137 (9<sup>th</sup> Cir. 2010).