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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

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FILE:



Office: CALIFORNIA SERVICE CENTER

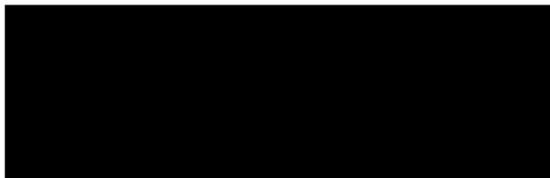
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IN RE:



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:

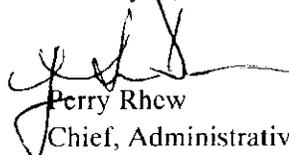


INSTRUCTIONS:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 Director, California Service Center, 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 and two motions to reopen and/or reconsider. The matter is now before the AAO on a third motion to reopen and reconsider. The motion will be dismissed. The order dismissing the appeal will be affirmed.

As the facts and procedural history have been adequately documented in the previous decisions of the AAO, dated March 11, 2009, September 24, 2009, and May 25, 2010, respectively, only certain facts will be repeated as necessary here. The applicant is a native and citizen of Mexico who, on May 2, 2000, attempted to elude inspection at the port of entry in Otay Mesa, California. On May 2, 2000, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1).

The applicant subsequently filed an Application to Register Permanent Residence or Adjust Status (Form I-485) as the derivative of an Immigrant Petition for Alien Worker (Form I-140) filed on behalf of her spouse. During her I-485 interview with a USCIS officer at the district office in Los Angeles, California, the applicant indicated that she had reentered the United States without inspection in 2000. The I-485 application was denied. On November 9, 2005, the applicant filed the Form I-212, indicating that she continued to reside in the United States. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). She 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 remain in the United States and reside with her lawful permanent resident spouse and U.S. citizen children.

In his April 28, 2006 decision, the director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed. The 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 director denied the Form I-212 accordingly. *See Director's Decision*, dated April 28, 2006.

On motion, counsel submits additional hardship documentation and cites three unpublished AAO decisions in support of his assertion that the applicant "has as many favorable and mitigating factors as those cited . . . in cases that were approved by the AAO."

None of the AAO cases cited by counsel involves inadmissibility under section 212(a)(9)(C)(i) of the Act. It is also noted that counsel made this same argument in his first motion. As stated in the AAO's September 24, 2009 decision, counsel's contentions regarding previously sustained cases are not applicable to the applicant's case.<sup>1</sup> Counsel also made the "hardship" argument in his first motion. Again, as stated in the AAO's September 24, 2009 decision, the applicant is not eligible to apply for permission to reapply for admission and thus the AAO need not render a decision as to whether the applicant would warrant a favorable exercise of discretion if she were eligible to apply for permission to reapply for admission. In sum, counsel does not support his assertions by any

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<sup>1</sup> The applicant will be required to provide evidence establishing that she is currently outside the United States and has been outside the United States for a period of ten years when she becomes eligible to apply for permission to reapply for admission.

pertinent precedent decisions, or establish that the director or the AAO misinterpreted the evidence of record. As already determined in all of the AAO's previous decisions, the applicant is not currently eligible to apply for permission to reapply for admission.

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 and reconsider meet the requirements of a motion to reopen and reconsider. Accordingly, the motion to reopen and reconsider is dismissed pursuant to 8 C.F.R. § 103.5(a)(4) for failing to meet applicable requirements, and the order dismissing the appeal is affirmed.

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