

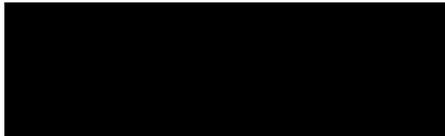
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: SAN FRANCISCO, CA

Date:

SEP 28 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, San Francisco, California, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). A subsequent appeal was rejected by the Administrative Appeals Office (AAO) as untimely filed. The matter is again before the AAO on a motion to reconsider. The motion will be dismissed and the AAO decision, dated January 12, 2010, will be affirmed.

The applicant 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).

On motion, counsel asserts, in part, that the appeal was incorrectly submitted to the AAO due to a clerical error, and that neither she nor the applicant received the returned appeal from the AAO.

The AAO acknowledges counsel's assertions on motion. The May 29, 2009 decision from the field office director in San Francisco, California, however, specifically states that any appeal of the denial of the Form I-212 must be filed with that office. In this matter, the petitioner, through counsel, improperly filed the I-212 application with the AAO on June 28, 2009, and subsequently untimely filed the appeal with the proper office.

Counsel's assertions on motion do not satisfy either the requirements of a motion to reopen or a motion to reconsider. 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: (1) 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 U.S. Citizenship and Immigration Services (USCIS) policy; and (2) 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).

Here, the motion contains no evidence entailing new facts that were previously unavailable. Further, the record does not contain affidavits or other documentary evidence in support of a motion to reopen. 8 C.F.R. § 103.5(a)(2).

The evidence also fails to satisfy the requirements of a motion to reconsider. Counsel does not support her assertions by any pertinent precedent decisions, or establish that the director or the AAO misinterpreted the evidence of record. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.¹

ORDER: The motion is dismissed. The previous decision of the AAO, dated January 12, 2010, is affirmed. The petition is denied.

¹ As stated in our rejection of the applicant's appeal, the applicant is ineligible for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act, and will not become eligible to apply until she has remained outside the United States for a period of ten years prior to such application. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).