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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

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



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Date: **DEC 14 2011**

Office: **NEW YORK, NY**

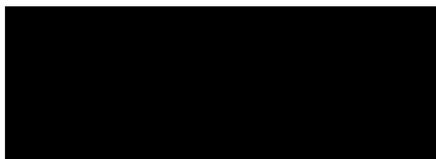


IN RE:



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 \$630. 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,

for Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, New York, New York, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a motion to reopen and reconsider. The motion will be denied.

The applicant is a native and citizen of Ecuador who, on February 2, 1999, sought admission at John F. Kennedy International Airport. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for attempting to obtain admission to the United States by fraud and for being an immigrant without valid documentation. On February 4, 1999, 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) under the name [REDACTED]. The applicant subsequently entered the United States without inspection.

On November 28, 2008, the applicant married his U.S. citizen spouse in Queens, New York. On March 6, 2009, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a Petition for Alien Relative (Form I-130) filed on his behalf by his U.S. citizen spouse. The Form I-485 indicates that the applicant entered the United States without inspection on January 1, 1999; however in an affidavit dated May 19, 2010, the applicant admits to have entered the United States after the date of his expedited removal. On May 19, 2009, the Form I-130 was approved. On the same day, the Form I-485 was denied. On September 9, 2009, the applicant filed a Form I-212, indicating that he resided in the United States. 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) in order to reside in the United States with his U.S. citizen spouse.

The district director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly on March 26, 2010. The applicant appealed that decision and the AAO dismissed that appeal on January 20, 2011, concurring with the decision of the district director in part and, in its most relevant part, finding that the applicant was statutorily ineligible to file an I-212 application as a result of his inadmissibility under INA § 212(a)(9)(C)(i)(II), 8 U.S.C. § 1182(a)(9)(C)(i)(II).<sup>1</sup> The applicant has filed a motion to reopen and motion to reconsider the AAO decision.

On motion, counsel states that the AAO incorrectly determined that the applicant does not have a qualifying petition filed prior to April 30, 2001. In support of the motion, counsel submitted a brief and Exhibits A-W. The entire record was reviewed in rendering a decision in this case.

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 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

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<sup>1</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.

Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

...

The record reflects that the applicant was ordered removed on February 4, 1999 and subsequently entered the United States without being admitted. Thus, the applicant is inadmissible under section 212(a)(9)(C)(i) of the Act. An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). Thus, to seek permission to reapply for admission, the applicant's must have departed at least ten years ago and *remained outside the United States*. As such, under section 212(a)(9)(C)(i) and (ii) of the Act, the applicant is statutorily ineligible to apply for permission to reapply for admission into the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in determining whether the applicant has a qualifying petition filed before April 30, 2001, or whether he merits permission to reapply for admission as a matter of discretion.

On motion, the applicant does not address his inadmissibility under the provisions of INA § 212(a)(9)(C)(i)(II). The applicant has not provided any new facts to be considered in regards to this ground of inadmissibility nor has the applicant established that the finding of his inadmissibility and present ineligibility to file for permission to reapply for admission under 212(a)(9)(C)(iii) was based on an incorrect application of law or Service policy. Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish he is eligible for the benefit

  
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sought. After a careful review of the record, the AAO finds that in the present motion, the applicant has not met his burden. Accordingly, the combined motion will be dismissed.

**ORDER:** The appeal is dismissed.