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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

U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: FRESNO, CA Date: MAR 15 2011

[redacted]

IN RE: [redacted]

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:

[redacted]

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,

Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Fresno, 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 and a motion to reconsider. The matter is now before the AAO on a second motion to reconsider. The motion to reconsider will be dismissed.

The applicant is a native and citizen of Mexico who, on April 16, 2000, appeared at the San Ysidro, California port of entry. The applicant presented a lawful permanent resident card bearing the name "Evelin Marlen Blanco Hernandez." The applicant was placed into secondary inspection. The applicant admitted that she was not the true owner of the document and that she did not have valid documentation to enter the United States. 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 (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for attempting to enter the United States by fraud and for being an immigrant without valid documentation. On April 17, 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).

On July 31, 2007, 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 her behalf by her naturalized U.S. citizen spouse. The Form I-485 indicates that the applicant reentered the United States without inspection in April 2000. On the same day, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Form I-212, indicating that she resided in the United States. On July 13, 2009, the Form I-485 and Form I-601 were denied. The applicant is inadmissible under section 212(a)(9)(A)(i) of 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 naturalized U.S. citizen spouse and two U.S. citizen children.

The field office 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 been removed. The field office 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 field office director denied the Form I-212 accordingly. *See Field Office Director's Decision,* dated July 13, 2009.

On appeal, counsel contended that the decision in *Gonzales v. DHS* (*Gonzales II*), 508 F.3d 1227 (9th Cir. 2007), is on appeal; and in light of *Rodriguez-Echeverria v. Mukasey,* 534 F.3d 1047 (9th Cir 2008), there is the issue of whether the applicant's removal from the United States was constitutional because the applicant was not informed of her right to counsel.[1] *See Form I-290B,* dated August 3, 2009. In support of his contentions, counsel submitted only the referenced Form I-290B.

[1] The restraining order preventing U.S. Citizenship and Immigration Services (USCIS) from denying an applicant's Form I-212 because he or she has not remained outside the United States for a period of ten years, expired on February 6, 2009. While counsel contended that USCIS' denial of the applicant's Form I-212 was premature because a further appeal has been filed in *Gonzalez*, the Ninth Circuit denied the plaintiffs' application for an injunction on February 6, 2009, finding that the plaintiffs were unlikely to be successful on appeal. While the AAO noted counsel's assertion on appeal that the applicant's removal from the United States was unconstitutional because she was not informed of her right to counsel, the AAO has no authority to review the decision to remove the applicant.

The AAO dismissed the applicant's appeal because she 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 for failing to remain outside of the United States for the required ten years. *Decision of AAO,* dated March 15, 2010.

In the first motion to reconsider, counsel submitted the Form I-290B setting forth the same, identical arguments he set forth in his appeal. *See Form I-290B*, dated March 29, 2010. In support of his motion to reconsider, counsel submitted only the referenced Form I-290B.

In the second motion to reconsider, counsel submits the Form I-290B setting forth the same, identical arguments he set forth in his appeal and first motion to reconsider. *See Form I-290B*, dated December 3, 2010. In support of his motion to reconsider, counsel submits only the referenced Form I-290B. 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:

> (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.

As discussed in the AAO's prior decision, counsel has failed to establish that the AAO's prior decisions were based upon an incorrect application of law or USCIS policy. Accordingly, the motion to 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 is dismissed. The order dismissing the appeal is affirmed.