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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

Date: **JUN 19 2012**

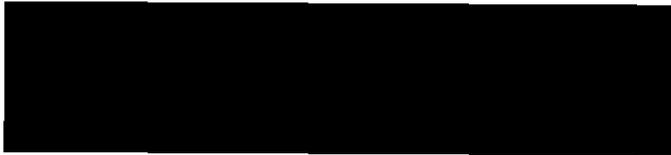
Office: HOUSTON

FILE:

IN RE: Applicant:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Houston, Texas, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and an appeal of that decision was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen. The motion will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who falsely represented himself to be a citizen of the United States on March 9, 1998, and was convicted in the US District Court, Southern District of Texas for knowingly, willfully and in violation of law attempting to gain illegal entry into the United States by claiming to be a United States citizen at the Port of Entry at Brownsville, Texas. The applicant was subsequently removed from the United States on March 9, 1998. The applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii). The applicant is further inadmissible pursuant to section 212(a)(9)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A) as an alien who has previously been removed. He 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 US Citizen spouse.

The field office director determined that the applicant was inadmissible under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), and denied the Form I-212 accordingly. *See Field Office Director's Decision, dated March 24, 2011.* The applicant appealed the decision to the AAO, and the appeal was dismissed. *Decision of the Administrative Appeals Office, dated October 28, 2011.*

As noted in the previous decision of the AAO, *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. The applicant is subject to the provisions of section 212(a)(6)(C)(ii) of the Act. No waiver is available to an alien who has falsely represented himself to be a citizen of the United States, therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the Field Office Director, Houston, Texas.

The applicant filed a Motion to Reopen. In the motion, the applicant submitted additional documentary evidence to support the applicant's claim that his spouse would suffer extreme hardship if the waiver is not granted.

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

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).

In addition, the regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion does not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must be dismissed for this reason.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion will be dismissed.

ORDER: The appeal is dismissed.